(19,679.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 211.

HENRIETTA S. CHRISTOPHER AND JOHN G. CHRISTOPHER, PLAINTIFFS IN ERROR,

vs.

JOSEPH W. NORVELL, RECEIVER OF THE FIRST NATIONAL BANK OF FLORIDA.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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a UNITED STATES OF AMERICA, }
Fifth Judicial Circuit. }

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun on the third Monday of November, 1904, and held in the courtroom of said court, in the city of New Orleans, before the Honorable Don A. Pardee, the Honorable A. P. McCormick, and the Honorable David D. Shelby, United States circuit judges for the fifth circuit.

HENRIETTA S. CHRISTOPHER ET AL., Plaintiffs in Error, }
versus } No. 1414.
JOSEPH W. NORVELL, Receiver, Defendant in Error. }

Be it remembered, that heretofore, to-wit: on the 26th day of September, 1904, a transcript of the record of the above styled cause from the circuit court of the United States for the southern district of Florida, was filed in the office of the clerk of said United States circuit court of appeals, for the fifth circuit, in the words and figures following, to-wit:

1 Caption.

Be it remembered, that at a term of the circuit court of the United States in the fifth circuit thereof, and in and for the southern district of Florida, begun and holden at Jacksonville, Florida, on the 7th day of December, 1903, and not yet adjourned, the Honorable James W. Locke, United States district judge, for the southern district of Florida, presiding, the following proceedings were had and the following case came on for trial and was tried, to-wit:

JOSEPH W. NORVELL, as Receiver of the First National Bank of Florida, a Corporation under the Laws of the United States of America, }
vs. } No. 251. At Law.
HENRIETTA S. CHRISTOPHER and JOHN G. Christopher, Her Husband. }

Damages, $3,000.00.

Precipe and Appearance.

In the Circuit Court of the United States, Southern District of Florida.

JOSEPH W. NORVELL, as Receiver of the First National Bank of Florida, a Corporation under the Laws of the United States of America,

vs.

HENRIETTA S. CHRISTOPHER and JOHN G. CHRISTOPHER, Her Husband.

Damages, $3,000.00.

The clerk of said court will please issue summons *ad respondendum*, directed to the defendants, Henrietta S. Christopher and John G. Christopher, her husband, in the above entitled cause, returnable to the rule day in course, to-wit: July 6th, 1903.

D. U. FLETCHER,
Plaintiff's Attorney.

Please enter our appearance for defendants at July rule day, waiving issuance and service of process.

H. H. BUCKMAN,
Att'y for Defendants.

2 (Indorsed:) In circuit court, United States, southern district of Florida. Joseph W. Norvell, receiver, *vs.* Henrietta S. Christopher *et al.* Precipe for summons. Filed June 10, 1903. E. O. Locke, clerk. By E. D. Dodge, deputy clerk. Duncan U. Fletcher, attorney for plaintiff.

Declaration.

In the Circuit Court of the United States, Southern District of Florida.

JOSEPH W. NORVELL, as Receiver of the First National Bank of Florida, a Corporation under the Laws of the United States of America,

vs.

HENRIETTA S. CHRISTOPHER and JOHN G. Christopher, Her Husband.

No. 251. At Law.

Damages, $3,000.00.

Declaration.

The plaintiff, Joseph W. Norvell, as receiver of the First National Bank of Florida, a corporation organized under the laws of the

United States of America, by D. U. Fletcher, his attorney, sues the defendants, Henrietta S. Christopher and John G. Christopher, her husband, of Duval county, Florida, for that the said The First National Bank of Florida was duly incorporated and organized under the laws of the United States, and on, to-wit: March 14th, 1903, became and was insolvent, and the plaintiff, Joseph W. Norvell, was duly appointed by the Comptroller of the Currency receiver of the said bank and to collect the assets of the said The First National Bank of Florida, under and in pursuance of the laws of the United States of America in relation to national banks, on to-wit: the 14th day of March, A. D. 1903, and that the plaintiff aforesaid took possession of the property and assets of the said First National Bank of Florida thereupon and the books and records thereof, and the said defendant, Henrietta S. Christopher, was and is owner of fifteen (15) shares of stock of the said The First National Bank of Florida, the same standing in her name upon the books of said bank; that the — Henrietta S. Christopher is a married woman, wife of the said John G. Christopher, and was at the time she acquired the said shares of stock; that on, to-wit: April 1st, 1903, an assessment
3 upon and requisition of the shareholders of the said First National Bank of Florida was levied and made upon each and every one of them, for one hundred dollars upon each and every share of the capital stock of said association held and owned by them, respectively, at the time of its failure, by the Comptroller of the Currency, in pursuance of sections 5151 and 5234 of the Revised Statutes of the United States, in words and figures following to-wit:

Assessment upon Shareholders.

In the Matter of the FIRST NATIONAL BANK OF FLORIDA, Jacksonville, Florida.

TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY,
WASHINGTON, D. C., April 1, 1903.

To all whom it may concern:

Whereas, upon a proper accounting of the receiver heretofore appointed to collect the assets of the "The First National Bank of Florida," Jacksonville, Florida, and upon a valuation of the uncollected assets remaining in his hands, it appears to my satisfaction that in order to pay the debts of such association it is necessary to enforce the individual liability of the stockholders therefore to the extent hereinafter mentioned, as prescribed by section- 5151 and 5234 of the Revised Statutes of the United States.

Now, therefore, by virtue of the authority vested in me by law, I do hereby make an assessment and requisition upon the shareholders of the said "The First National Bank of Florida," Jacksonville, Florida, for fifty thousand dollars, to be paid by them ratably on or before the first day of May, 1903, and I hereby make demand upon

each and every share of the capital stock of said association held or owned by them, respectively, at the time of its failure; and I hereby direct Joseph W. Norvell, the receiver heretofore appointed, to take all necessary proceedings, by suit or otherwise, to enforce to that extent the said individual liability of the said shareholders.

In witness whereof, I have hereunto set my hand and caused my seal of office to be affixed to these presents, at the city of Washington, in the District of Columbia, this first day of April, A. D. 1903.

[SEAL.] T. P. KANE,
Deputy and Acting Comptroller of the Currency."

That, in pursuance of the said levy and assessment, the
4 plaintiff made demand for the payment of the same upon all the shareholders of the said The First National Bank of Florida and on the defendant, Henrietta S. Christopher, as follows:

"Office of the Receiver of the First National Bank of Florida,
Jacksonville, Florida.

You will please take notice, that the Comptroller of the Currency has levied an assessment upon the stockholders of the First National Bank of Florida, Jacksonville, Florida, of one hundred dollars ($100) a share, payable at the office of the receiver, on or before May 1, 1903. The receiver is, however, authorized by the Comptroller to grant an extension, without interest, to shareholders who pay 25% of the assessment on or before that date, and who will give a written obligation, satisfactorily guaranteed, to pay 25 % additional on or before June 1, 1903; 25 % on or before July 1, 1903; and the remaining 25 % on or before August 1, 1903.

You are therefore requested to pay the assessment of 15 shares of stock standing in your name, in accordance with the foregoing order and this notice, or suit will be enforced to enforce payment.

JOS. W. NORVELL,
Receiver First National Bank of Florida,
Jacksonville, Florida.

To Mrs. Henrietta S. Christopher, Jacksonville, Fla."

That the said defendant, Henrietta S. Christopher, and said John G. Christopher have refused and failed, and each of them has, to pay said assessment or any portion thereof and to comply with the demands of the plaintiff in any respect whatever, and the plaintiff says the defendant, Henrietta S. Christopher, is indebted to him in the sum of fifteen hundred dollars ($1500) with interest thereon from April 1st, 1903, at the rate of eight per cent. per annum, by reason of said assessment and under and in pursuance of the acts of Congress in this behalf, and therefore he brings this suit, and the plaintiff, Joseph W. Norvell, as receiver aforesaid, claims $3,000 damages.

2. And the plaintiff further sues the defendants for money found to be due from the defendants to the plaintiff, upon account then

and there stated between them, and the plaintiff claims three thousand dollars damages.

DUNCAN U. FLETCHER,
Plaintiff's Attorney.

(Indorsed:) In circuit court United States, southern district of Florida. In — Joseph W. Norvell, receiver, *vs.* Henrietta S. Christopher *et al.* Declaration. D. Filed June 12, 1903. E. O. Locke, clerk, by E. D. Dodge, deputy clerk. Duncan U. Fletcher, attorney for complainant.

5

Demurrer.

In the Circuit Court of the U. S., Southern District of Florida.

JOSEPH W. NORVELL, as Receiver of the First National Bank of Florida,
vs.
HENRIETTA S. CHRISTOPHER ET AL.

And now comes the defendants and demur to the declaration herein, and say that the same is bad in substance and in form, and for cause of demurrer, and for points of law to be argued, say:

1. That it appears upon the face of the said declaration that said suit is a common law proceeding against the said Henrietta S. Christopher, who is shown therein and thereby, to be a married woman under coverture, and that under the constitution and the laws of the State of Florida, this court has no jurisdiction or power to render any judgment in this cause against the said defendants for the matters of this suit, and defendants pray to be dismissed with their reasonable costs in this behalf sustained.

H. H. BUCKMAN,
Defendants' Att'y.

I hereby certify that in my opinion the foregoing demurrer is well founded in points of law.

H. H. BUCKMAN,
Defendants' Att'y.

STATE OF FLORIDA,
County of Duval.

Personally appeared before me John G. Christopher, who being duly sworn, says that he is one of the defendants in the above cause named and that the foregoing demurrer is not interposed for delay.

JNO. G. CHRISTOPHER.

6

Sworn to and subscribed before me this 1st day of September, A. D. 1903.

FREDICK SEELY,
Notary Public for the State of Florida at Large.

Commission expires Sept. 14th, 1904.

(Indorsed:) In the circuit court of the U. S., southern district of Florida. Joseph W. Norvell, as receiver of the First National Bank, *vs.* Henrietta S. Christopher *et al.* Demurrer.

Plaintiff consents to filing this demurrer to-day, its having been overlooked by mistake yesterday, Sept. 8th, 1903. D. U. Fletcher, plaintiff's att'y.

Filed Sept. 7th, 1903. E. O. Locke clerk, by E. D. Dodge, deputy clerk. H. H. Buckman, defendants' att'y.

Ruling on Demurrer.

In the Circuit Court of the United States in and for the Southern District of Florida.

J. W. NORVELL, Receiver, etc.,
vs.
HENRIETTA S. CHRISTOPHER ET AL.

This cause coming on to be heard upon the demurrer to the declaration, and having been fully heard and duly considered, it is ordered that said demurrer be overruled; and the defendants have until the rule day of December to further plead as advised.

Jacksonville, Fla., November 14th, 1903.

JAMES W. LOCKE, Judge.

(Indorsed:) U. S. circuit court, so. district of Florida. Jos. W. Norvell, as receiver, *vs.* Henrietta S. Christopher. Order overruling demurrer. Filed Nov. 14, 1903. E. O. Locke, clerk, by E. D. Dodge, deputy clerk.

7 Pleas.

In the Circuit Court of the United States, Fifth Circuit, Southern District of Florida.

JOSEPH W. NORVELL, as Receiver,
vs.
HENRIETTA S. CHRISTOPHER & JOHN G. CHRISTOPHER.

And now come the defendants by their attorney, H. H. Buckman, and for plea to the declaration and the several matters thereof, say:

First. That they were never indebted as in the manner and form alleged against them in the said declaration.

Second. And for a further plea in this behalf, defendants say that the defendant, Henrietta S. Christopher, was at and before the time of the matters and things in the said declaration alleged, and still is a married woman, and that the defendant, John G. Christopher, is her husband, and that defendants are, and were at and before the time of the arising of the matters in the said declaration alleged, citizens and residents of the State of Florida.

Third. And for a further plea in this behalf, defendants say that the defendant, Henrietta S. Christopher is a married woman, a citizen and resident of the State of Florida, and that under the constitution and laws of the State of Florida, as such that she is exempt under such constitution and laws from having any personal judgment rendered against her in this proceeding or in any proceeding at law or in equity, and that the only judgment that can be rendered in this cause is a personal judgment against her for money, and she here pleads her said coverature and the exemption granted by the constitution and laws of this State.

Fourth. And for further plea in this behalf, defendants say that the defendant, Henrietta S. Christopher is not, and never was a shareholder in the said First National Bank of Florida, she being a married woman at and before the time of the matters alleged in the said declaration against her.

Fifth. And for further plea in this behalf, defendants say that on, to-wit, the year 1885, one R. M. Shoemaker, was a shareholder in the said bank, and that on, to-wit, the year 1886, the said Shoemaker departed this life testate, and in and by his said last will and testament, devised to the defendants Henrietta S. Christopher, who was his daughter, 15 shares of stock in the First National Bank of Florida, and the executors of the said last will and testament

8 caused without the knowledge or consent of the said defendant, the said 15 shares of stock to be transferred, issued and set apart to the said defendant and delivered to her the said 15 shares of stock as devised to her under the said will; that she never paid anything for the same; never caused her name to be entered upon the books of said bank, and never has in any manner or form or by any instrument or writing, subscribed for any stock, or made herself a shareholder in the said bank, and that at the time of the said devise and the said transfer and delivery of the said stock to her, as aforesaid, that she was, and has continued to be, and still remains, a married woman.

All of which defendants are ready to verify.

H. H. BUCKMAN,
Defendants' Attorney.

STATE OF FLORIDA,
County of Duval, } ss:

Personally appeared before me John G. Christopher, who being duly sworn, says that he is one of the defendants in this cause and is the husband of Henrietta S. Christopher; that he has read the foregoing pleas and knows the contents thereof, and that the same and the matters thereof are true.

JOHN G. CHRISTOPHER.

Sworn to and subscribed before me this 7 day of December, A. D. 1903.

[NOTARIAL SEAL.] W. D. DE COTTES,
Notary Public, State of Florida at Large.

My commission expires July 10th, 1906.

(Indorsed:) "251. 4. L. 3. In circuit (court) of the U. S. 5th circuit, southern district of Florida. Joseph W. Norvell as receiver *vs.* Henrietta S. Christopher and John G. Christopher. Pleas. Filed Dec. 7, 1903. E. O. Locke, clerk."

9 Demurrer to Pleas.

In Circuit Court of the United States, Fifth Circuit, Southern District of Florida.

JOSEPH W. NORVELL, as Receiver of First National Bank of Florida, Plaintiff,
vs.
HENRIETTA S. CHRISTOPHER and JOHN G. CHRISTOPHER, Her Husband, Defendants.

Demurrer to All Pleas Except the First.

The plaintiff says that the second, third, fourth and fifth pleas, severally, of defendants are and each of said pleas, is bad in substance, and the substantial matters of law intended to be argued are:

1. As to the said second plea, (*a*) the same states no defense to said action; (*b*) the fact that said Henrietta S. Christopher was and is a married woman, as alleged, constitutes no defense; (*c*) the fact that defendant- were and are citizens and residents of the State of Florida, as alleged, taken in connection with all the other averments of said plea, or without them, constitutes no defense; (*d*) the constitution nor laws of the State of Florida, neither, prohibited a married woman from owning stock in a national bank.

2. As to said third plea: (*a*) the same matters and grounds as set forth to said second plea, and further: (*a*) the defendant, Henrietta S. Christopher, is not prohibited from becoming a stockholder in a national bank, by the constitution or laws of the State of Florida, and the laws of the United States fix her liability in such case and determine how that liability may be enforced; (*b*) exemption from personal judgment under the laws of the State of Florida in such cases is not controlling and is not defense.

3. As to said fourth plea, the same matters and grounds as set forth with references to said second plea, and further: (*a*) that there is no law, either of the State of Florida, or of the United States, which prohibits a married woman from owning shares or stock in a national bank; (*b*) the fact that said defendant, Henrietta S. Christopher, was a married woman at and before the matters alleged does

not prevent her being a shareholder and as much liable for assessment as alleged.

4. As to said fifth plea, the same matters and grounds as set forth as to said second plea, and further: (*a*) said plea shows said shares of stock were "transferred, issued, and set apart" and "delivered" to said defendant, Henrietta S. Christopher; (*b*) said plea shows said Henrietta S. Christopher knew of the devise, transfer, and deliver of said stock to her, and she received and accepted the same; (*c*) said plea shows said Henrietta S. Christopher is the actual owner of said stock and, therefore, liable to said assessment; (*d*) said plea does not show the said defendant, Henrietta S. Christopher, is not authorized or not permitted to own national bank stock.

And for other causes apparent on the face of said pleas.

D. U. FLETCHER,
Plaintiff's Attorney.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

D. U. FLETCHER,
Plaintiff's Attorney.

STATE OF FLORIDA,
Duval County.

Personally came before me Joseph W. Norvell, who being duly sworn, deposes and says he, as receiver of the First National Bank of Florida, is the plaintiff in the above stated cause, and that the within and foregoing demurrer is not interposed for delay.

JOS. W. NORVELL.

Sworn to and subscribed before me this 16th day of December, A. D., 1903.

L. B. POWELL,
Notary Public, State of Florida at Large.

(Indorsed:) In circuit court United States, southern district of Florida, in law. Joseph W. Norvell, rec. *et al. vs.* Henrietta S. Christopher *et al.* Demurrer to pleas. Filed Dec. 17, 1903. E. O. Locke, clerk. Duncan U. Fletcher, attorney for plaintiff.

11 Ruling on Demurrer.

In the Circuit Court of the United States in and for the Southern District of Florida.

JOSEPH W. NORVELL, Receiver,
vs.
HENRIETTA S. CHRISTOPHER ET AL.

This cause coming on to be heard upon the demurrer to the second, third, fourth and fifth pleas herein, and having been fully

heard by argument of counsel, now upon consideration thereof, it is ordered that the demurrer to the second, third and fifth pleas be and the same are hereby sustained, and that the demurrer to the fourth plea be overruled.

JAMES W. LOCKE, Judge.

Jacksonville, Fla., May 16th, 1904.

(Indorsed:) United States circuit court, southern district of Florida. Joseph W. Norvell, receiver, etc., *vs.* Henrietta S. Christopher *et al.* Order on demurrer to pleas. Filed May 16, 1904. E. O. Locke, clerk.

Joinder of Issue.

In the Circuit Court of the United States for the Southern District of Florida.

JOSEPH W. NORVELL, as Receiver of the First National Bank of Florida,
vs.
HENRIETTA S. CHRISTOPHER ET AL.

Now comes the plaintiff, by D. U. Fletcher, his attorney, and joins issue upon the first and fourth pleas filed herein.

D. U. FLETCHER,
Plaintiff's Attorney.

(Indorsed:) In the United States — court, southern district, State of Florida. Jos. W. Norvell, as rec. First National Bank, Fla., *vs.* Henrietta S. Christopher *et al.* Joinder of issue on pleas. Filed May 16, 1904. E. O. Locke, clerk. Duncan U. Fletcher, attorney for plaintiff.

12 Waiver of Jury.

In the Circuit Court of the United States, Southern District of Florida.

JOSEPH W. NORVELL, as Receiver of the First National Bank of Florida,
vs.
HENRIETTA S. CHRISTOPHER and JOHN G. CHRISTOPHER, Her Husband.

It is hereby stipulated by the plaintiff and defendants, by their attorneys of record, that the above entitled cause may be tried and determined by the court without the intervention of a jury herein, a jury being hereby waived, in accordance with sections 649 and 700, of the Revised Statutes of the United States.

D. U. FLETCHER,
Attorney for Plaintiff.
H. H. BUCKMAN,
Attorney for Defendants.

(Indorsed:) In the circuit court United States, southern district of Florida. In — Joseph W. Norvell, as receiver First National Bank of Florida, *vs.* Henrietta S. Christopher and John G. Christopher, her husband. Stipulation of counsel, waiving jury. Filed June 21, 1904. E. O. Locke, clerk. Duncan U. Fletcher, attorney for plaintiff.

Findings of Court.

In the Circuit Court of the United States in and for the Southern District of Florida.

JOSEPH NORVELL, as Receiver of First National Bank of Florida,
vs.
HENRIETTA S. CHRISTOPHER ET AL.

This cause coming on to be heard before the court upon the stipulation of the parties in writing, waiving a jury, and an agreed stipulation as to the evidence, oral and documentary, on behalf of the plaintiff and defendant, having been introduced, weighed
13 and considered, and the court having duly considered the law and facts, and being fully advised in the premises, it finds as matters of fact:

First. That the defendant Henrietta S. Christopher was at the time of the failure, insolvency and the putting into the hands of a receiver of said First National Bank of Florida, a shareholder in said First National Bank of Florida, of fifteen shares of said stock, of the par value of fifteen hundred ($1,500.00) dollars.

Second. That the defendant Henrietta S. Christopher was, at the time of the failure, insolvency and the putting into the hands of a receiver of said First National Bank of Florida, to-wit: on the 14 day of March, A. D. 1903, and at and before the time of acquiring said stock, was and now is a married woman and a citizen of the State of Florida, and that said stock came to her by the will of her father.

Third. That the Comptroller of the Treasury, in accordance with law, did, on the 1st day of April, A. D. 1903, make an assessment of the full par value upon each share of said stock, to the amount of fifteen hundred ($1,500.00) dollars.

And the court finds as matters of law:

That said defendant, Henrietta S. Christopher, being a shareholder of said bank, was subject to all the liabilities of shareholders in said bank.

And the court finds for the plaintiff herein, and assesses the damages against the said defendant, Henrietta S. Christopher, in the full sum of sixteen hundred and sixty (1660.00) dollars.

Jacksonville, Fla., July 1, 1904.

JAMES W. LOCKE, Judge.

(Filed July 1, 1904. E. O. Locke, clerk.)

Motion for New Trial, &c.

In the District Court of the United States, Southern District of Florida.

JOSEPH W. NORVELLE, as Receiver, etc.,
vs.
HENRIETTA S. CHRISTOPHER ET AL.

And now comes the defendant, Henrietta S. Christopher, by her attorney, H. H. Buckman, and moves the court in arrest of judgment for a new trial upon the following grounds:

14 First. That the finding of the court that the plaintiff is entitled to judgment is contrary to law.

Second. That the finding by the court that the defendant was a shareholder of the First National Bank of Florida within this the legal sense and meaning of that term is contrary to law and the facts.

Third. That the action of the court in directing and entering judgment for the plaintiff is contrary to law.

Fourth. That it appears clearly in and by the pleadings and the testimony submitted to the court that the defendant, Henrietta S. Christopher, was a married — and was at the time she acquired title to the said stock, and that the finding of the court against her and for judgment against her is contrary to the law and the evidence.

Fifth. That it appears by the testimony and the pleadings that at the time of commencement and rendition of the judgment that the defendant in this proceedings and at the time of acquiring said stock, the defendant, Henrietta S. Christopher, was a married woman, and as such is exempt under the constitution and the laws of the State from having any personal judgment rendered against her.

5½. That the court erred in refusing the motion to strike the testimony and render judgment for the defendants.

Sixth. That the law and procedure of the State of Florida in common law cases which this court is bound to follow, prohibit the rendition of any personal judgment against a married woman, and that the finding against her and the directing of judgment against her by the court is contrary to law.

Seventh. That the court exceeded its jurisdiction and power in finding for the plaintiff and directing judgment against the defendant.

Eighth. That by the constitution and laws of the State of Florida all the property of a married woman is her separate property and cannot be levied upon or taken in execution under any personal judgment rendered against her and that the entry of judgment by the court, and the direction for the issuance of execution to be levied out of her property is beyond the jurisdiction of this court and void.

15 And for these and other errors appearing upon the face of said proceedings and records.

Defendant here moves that the said judgment be arrested or if already entered, that the same be vacated; that a new trial be granted and execution be stayed.

H. H. BUCKMAN,
Def'ts' Attorney.

You will please take notice that we will call up the above motion for hearing on the 5th day of July, A. D. 1904, at 10:00 a. m. before the judge of said court or as soon thereafter as counsel can be heard.

H. H. BUCKMAN,
Def'ts' Attorney.

To D. U. Fletcher, Esq., plaintiff's attorney.

(Indorsed:) United States circuit court, southern district of Florida, Norvell receiver *vs.* Christopher. Motion in arrest of judgment and for new trial. Filed July 4, 1904. E. O. Locke, clerk.

Order Denying New Trial and for Writ of Error, etc.

In the Circuit Court of the United States, Southern District of Florida.

J. W. NORVELL, as Receiver, &c.,
vs.
HENRIETTA S. CHRISTOPHER ET AL.

And now, on this day, this cause coming on to be heard upon motion for a new trial, and in arrest of judgment and was submitted by counsel whereupon, upon consideration thereof it is ordered that said motion be denied; to which defendants except; and defendants having given notice of and prayed a writ of error to the circuit court of appeals, in open court, it is ordered that said writ be allowed, and defendants be given sixty days in which to prepare and have signed a bill of exceptions and that the bond be given, which shall act as a supersedeas herein is hereby fixed at two thousand dollars.

JAMES W. LOCKE, Judge.

Jacksonville, Fla., July 6th, 1904.

16 (Indorsed:) "No. 251. L. 3. Norvell *vs.* Christopher. Order. Filed Jul- 6, 1904. E. O. Locke, clerk."

Judgment.

In accordance with the findings of the court herein, it is considered that the plaintiff, Joseph W. Norvell, as receiver of the First

National Bank of Florida, do have, receive and recover of and from the defendant, Henrietta S. Christopher the sum of sixteen hundred and sixty dollars ($1,660.00) damages in this behalf sustained, as well as — dollars costs in this behalf expended. Let execution issue.

Attest: E. O. LOCKE, Clerk.

Entered July 6th, 1904.
(From the Judgment Record, page 226.)

Petition for Writ of Error.

In Circuit Court of United States, Southern District Florida.

JOSEPH W. NORVELLE, as Receiver of First National Bank of Florida,
vs.
HENRIETTA S. CHRISTOPHER and JNO. G. CHRISTOPHER.

Come now the defendants in the above entitled cause feeling themselves aggrieved by the findings and judgment of said court, entered on the 6th day of July, A. D. 1904, and petition said court for an order allowing said defendants to prosecute a writ of error to the circuit court of appeals of the United States for the 5th circuit under and according to the laws of the United States in that behalf made and provided and that an order may be made fixing the amount of security these defendants shall give and furnish upon said writ of error and that upon the giving of the same all further proceedings in the court be stayed and suspended until the determination of said writ of error by the United States circuit court of appeals aforesaid.

And your petitioners will ever pray, etc.

H. H. BUCKMAN,
Att'y for Defendants.

17 (Indorsed:) In circuit court of United States, southern district Florida. Joseph W. Norvelle as receiver of First National Bank of Florida, *vs.* Henrietta S. Christopher and John G. Christopher. Application for writ of error. Filed Jul- 6, 1904. E. O. Locke, clerk.

Assignments of Error.

In the Circuit — United States, Southern District of Florida.

JOSEPH W. NORVELLE, as Receiver of First National Bank of Florida,
vs.
HENRIETTA S. CHRISTOPHER and JOHN G. CHRISTOPHER.

Come now the defendants in the above entitled cause named and file the following assignment of error- upon which they will rely upon their prosecution of the writ of error taken herein, to-wit:

First. That the circuit court of the United States southern district of Florida erred in overruling the demurrer of the defendants to the plaintiff's declaration in said cause.

Second. That said court erred in sustaining the demurrer interposed by *by* the plaintiff to the 2nd, 3rd and 5th plea- interposed by defendants to the declaration in said cause.

Third. That the said court erred in sustaining the demurrer of the plaintiff to so much of the 4th plea filed by the defendants following immediately after the word "Florida," in the fourth line reading as follows, "She being a married woman at and before the time of the matters alleged in the said declaration against her."

Fourth. That said court erred in denying the motion of the defendants to strike the testimony of the plaintiff as immaterial and irrelevant, and not constituting any cause of action against these defendants and for finding and judgment for the defendants on the ground that said testimony showed that defendant, Henrietta S. Christopher, at and before the time she became owner of the shares of stock in the insolvent bank and at the time of the bringing of this suit and still is a married woman, domiciled in and a
18 citizen of the State of Florida, and as such was under the constitution and laws of Florida and the practice and procedure in said State exempt from the rendition of any personal judgment against her.

The full substance of which testimony was as follows:

That Henrietta S. Christopher was a daughter of R. M. Shoemaker who was a shareholder in the First National Bank of Florida she married John G. Christopher in 1881 and is still his wife, a citizen and resident of the State of Florida: that Shoemaker died and demised by will one-fifth of his stock holding to her; that November, 1887, the executors of the Shoemaker will caused one-fifth of the stock, equalling fifteen shares, to be transferred on the books of the bank and a certificate for same issued to her in her name, which two days later was receipted for by her attorneys; that such transfer and issue was made without her knowledge, request or consent; that afterwards she personally was the recipient of several dividends on said shares of stock by checks made payable to her personal order; that she signed personally a paper with other holders of stock on February 23, 1894, being an application for an amendment to the articles of association of said bank, though such paper was not signed by her husband or acknowledged by her; that the bank was insolvent, receiver appointed assignment ordered and made, payment demanded of defendant and refused.

Fifth. That said court erred in finding (a jury being waived) under the testimony set out in the 4th assignment of error which is made part of this assignment; that the defendant, Henrietta S. Christopher, was a shareholder in said bank instead of simply a holder or owner of shares and that she was subject to all the liabilities of shareholders in said bank, having also found that at and before the time of the acquiring of said stock by her, the insolvency of

the bank, appointment of receiver, bringing of suit, and still was a married woman, a citizen and resident of Florida.

Sixth. That said court erred (a jury being waived) in finding for the plaintiff and assessing damages against the said defendant, Henrietta S. Christopher, she being then and there a married woman, a citizen of the State of Florida.

Seventh. That the court erred in denying the motion in arrest of judgment and for a new trial.

Eighth. That said court erred in rendering and entering
19 judgment in favor of the plaintiff and against the defendant Henrietta S. Christopher, for sixteen hundred and sixty dollars ($1,660.00), or any sum, the same being a personal judgment against a married woman, a citizen of the State of Florida.

Ninth. The court erred in rendering judgment against the defendant, Henrietta S. Christopher, which is a personal money judgment and as part thereof, directing the issuance of execution thereon to enforce and collect the same, such judgment being against a married woman, citizen of the State of Florida, and such execution directed to be enforced by levy out of her separate estate and property, the same being void and contrary to and prohibited by the constitution and laws of the State of Florida.

Tenth. That the United States circuit court for the southern district of Florida was without jurisdiction to render any judgment against the defendant, Henrietta S. Christopher, or any judgment except a judgment of dismissal of the cause, she being a married woman, a citizen of the State of Florida and said proceeding a common law proceeding governed by the constitution, laws and procedure of such State in common law causes.

Wherefore the said defendants, plaintiffs in error pray that the judgment of said court be reversed and such directions be given that full force and efficacy may enure to defendants by reason of the defense set up by them in their pleadings in said cause.

H. H. BUCKMAN,
Att'y for Defendants and Plaintiffs in Error.

(Indorsed:) In circuit court, United States, southern district of Florida. Joseph W. Norvell as receiver of First National Bank of Florida, *vs.* Henrietta S. Christopher and John G. Christopher. Assignment of errors. Filed Jul- 6, 1904. E. O. Locke, clerk.

20 Bond.

In the Circuit Court of the United States, Southern District of Florida.

JOSEPH W. NORVELL
vs.
HENRIETTA S. CHRISTOPHER and JOHN G. CHRISTOPHER ET AL.

Know all men by these presents: That we Henrietta S. Christopher and John G. Christopher as principals and George W. Parkhill

and Joseph H. Crosby as sureties are held and firmly bound unto Joseph W. Norvell as receiver of the First National Bank of Florida and his successor in office in the sum of two thousand dollars ($2000) for the payment of which well and truly to be made, be bind ourselves, our executors, administrators and successors jointly and severally, firmly *be* (by) these presents.

Signed and sealed with our seals this 15th day of July, A. D. 1904.

The condition of the above obligation is such that whereas on the 6th day of July, A. D. 1904, the above named Joseph W. Norvell, as receiver of the First National Bank of Florida, recovered a judgment against the above bounden Henrietta S. Christopher in the circuit court of the United States for the southern district of Florida for the sum of sixteen hundred and sixty dollars ($1660) and the said Henrietta S. Christopher and John G. Christopher being dissatisfied with said judgment, have prayed for and been allowed a writ of error therefrom to the circuit court of appeals of the United States for the fifth judicial circuit, now if the said Henrietta S. Christopher and John G. Christopher shall prosecute such writ of error to effect, and if they fail to make good their plea and the said judgment be affirmed, shall pay the same and shall answer all damages and costs then this application to be void, else to remain in full force and virtue.

HENRIETTA S. CHRISTOPHER. [SEAL.]
JOHN G. CHRISTOPHER. [SEAL.]
GEORGE W. PARKHILL. [SEAL.]
JOS. H. CROSBY. [SEAL.]

Taken and approved this 16th day of July, A. D. 1904.

E. O. LOCKE,
Clerk U. S. Court.
JAMES W. LOCKE, Judge.

21 STATE OF FLORIDA, }
County of Duval. }

Personally appeared before me, George W. Parkhill, and Jos. H. Crosby, who being each duly sworn, say they are worth in property in this the southern district of Florida and said State the sum of $2000.00 over and above, all debts and exemptions allowed by law.

GEORGE W. PARKHILL.
JOS. H. CROSBY.

Sworn to and subscribed before me this 16th day of July, A. D. 1904.

W. D. DE COTTES,
Notary Public, State of Florida at Large.

(Indorsed:) In the circuit court, United States, southern district, Florida. Joseph W. Norvell *vs.* Henrietta S. Christopher and

John G. Christopher, *et al.* Bond. Filed July 16, 1904. E. O. Locke, clerk. No. 251.

Bill of Exceptions.

In the Circuit Court of the United States, Fifth Circuit, Southern District of Florida.

JOSEPH W. NORVELL, as Receiver of First National Bank of Florida,
vs.
HENRIETTA S. CHRISTOPHER and JOHN G. CHRISTOPHER, Her Husband.

Be it remembered that afterward, to-wit: on the first day of July, A. D. 1904, at the said term of the said court, begun and holden in the city of Jacksonville, in and for the district aforesaid, before his honor James W. Locke, district judge, the issues joined in the above entitled cause between said parties coming on to be tried without the intervention of a jury. A jury being expressly and in writing filed herein waived by the parties who consented to such trial before the judge. Plaintiff being represented by D. U. Fletcher, Esq., as his attorney, and the defendant- by H. H. Buckman, Esq., as their attorney; and then and there upon the trial of said issues the said respective parties to maintain the issues in their behalf, through their respective attornies filed there stipulation in writing, as
22 to what the testimony in said case should be; both for the plaintiff and for the defendant, subject to such exceptions as to materiality, legality or its purtenancy, as either might see proper to make. Said parties through their counsel admitting that such should be the testimony in said case, which said testimony in behalf of plaintiff, according to said stipulation is as follows:

First. That the defendant Henrietta S. Christopher became the owner of fifteen shares of stock in the First National Bank of Florida November 15th, 1887, evidenced by certificate No. 54 for fifteen shares of such stock being issued to her on that day, and delivered to R. B. Archibald, as her attorney, November 17th, 1887. That she still holds said certificate and has never sold, transferred or assigned the said stock.

Second. That the said Henrietta S. Christopher, defendant, received several semi-annual dividends, from three to five per cent., on such stock, from November — 1887, up to and including February 1st, 1896, at which time the last dividend of three per cent. on capital stock of said bank was declared and paid to all the stockholders, as is shown by the stock books of said bank, including said defendant, Henrietta S. Christopher. Such dividends being paid to defendant by checks, made payable to her order, which she personally indorsed.

Third. That on the lists of stockholders in said bank, has appeared the name of said defendant, Henrietta S. Christopher, from

November 17th, 1887, to the present time. That the books of the bank show the holders and owners of stock by various persons, including fifteen shares in the name of Henrietta S. Christopher. That the dividend account, shown on the books of said bank, show the various dividends paid said Henrietta S. Christopher on said fifteen shares.

Fourth. That on February 23rd, 1894, the stockholders of said bank made application for "amendment to articles of association," and that among the signatures of such stockholders for such application appears the name of Henrietta S. Christopher, as owner of fifteen shares of stock in said bank.

Fifth. That an assessment was made and ordered upon the stockholders of said bank, April 1st, 1903, as provided by section 5151 and 5134 of the Revised Statutes of the United States, and notice thereof was duly sent to said defendant.

Sixth. That said bank became insolvent on, to-wit: the
23 14th day of March, 1903, and that plaintiff was duly appointed its receiver, qualified as such and took charge of its assets.

The plaintiff to further prove the issues in his behalf filed in evidence, copy of the order for assessment made by the Comptroller of the Currency, which is as follows:

Assessment upon Shareholders.

No. 2174.

TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY,
WASHINGTON, D. C., April 1, 1903.

In the Matter of the FIRST NATIONAL BANK OF FLORIDA, Jacksonville, Fla.

To all whom it may concern:

Whereas, upon the proper accounting by the receiver heretofore appointed to collect the assets of "The First National Bank of Florida," Jacksonville, Florida, and upon a valuation of the uncollected assets remaining in his hands, it appears to my satisfaction that in order to pay the debts of such association it is necessary to enforce the individual liability of the stockholders thereof to the extent hereinafter mentioned, as *ascribed* by section 5151 and 5134 of the Revised Statutes of the United States.

Now, therefore by virtue of the authority invested in me by law, I do hereby make an assessment and requisition upon the shareholders of the said "First National Bank of Florida," Jacksonville, Florida, for fifty thousand dollars, to be paid by them ratably, on or before the first day of May, 1903, and I hereby make demand upon each and every one of them for one hundred dollars, upon each and every share of the capital stock of said association, held or owned

by them respectively, and at the time of its failure; and I hereby direct Jos. W. Norvell, the receiver heretofore appointed, to take all necessary proceedings, by suit or otherwise, to enforce to that extent the said individual liability of said shareholders.

In witness whereof, I have hereunto set my hand and caused my seal of office to be affixed to these presents, at the city of Washington in the District of Columbia, the first day of April, A. D. 1903.

T. P. KANE,

[SEAL.] Deputy and Acting Comptroller of the Currency.

24 Also the notice given by the plaintiff as receiver to Henrietta S. Christopher, which is as follows:

Office of the Receiver of the First National Bank of Florida, Jacksonville, Fla.

JACKSONVILLE, FLA., April 1, 1903.

You will please take notice that, the Comptroller of the Currency has levied an assessment upon the stockholders of the First National Bank of Florida, Jacksonville, Florida, of one hundred dollars, ($100.00) a share, payable at the office of the receiver, on or before May 1st, 1903. The receiver is, however, authorized by the Comptroller to grant an extension, without interest, to shareholders who pay 25 per cent. of the assessment on or before that date, and who will give a written obligation, satisfactorily guaranteed, to pay 25 per cent. additional on or before June 1st, 1903, 25 per cent. on or before July 1st, 1903, and the remaining 25 per cent. on or before August 1st, 1903.

You are, therefore, requested to pay the assessment on 15 share- of stock standing in your name, in accordance with the foregoing order and this notice or suit will be commenced to enforce payment.

JOS. W. NORVELL,
Receiver First National Bank of Florida,
Jacksonville, Florida.

To Mrs. Henrietta S. Christopher, Jacksonville, Fla.

The plaintiff in its behalf further produced and offered as evidence the "amendment to articles of association," of said bank, upon which the signature of Henrietta S. Christopher appears as a shareholder in said bank to the amount of fifteen shares, which is as follows:

Amendment to Articles of Association.

The First National Bank of Florida, Jacksonville, Florida.

In accordance with and in pursuance of the provisions of "An act to enable national banking associations to extend their corporate existence, and for other purposes," approved July 12th, 1882,

we, the undersigned shareholders of "The First National Bank of Florida," located at Jacksonville, Florida, Duval county,
25 owning the shares of capital stock of the said association, set opposite our respective names, aggregating not less than two thirds of the stock of said association, the total number of shares representing the capital stock of said national banking association, five hundred shares, do hereby consent and agree that the 7th article of the articles of association of said national banking association, be, and is hereby amended to read as follows:

"This association shall continue until close of business May 26th, 1914, unless sooner placed in voluntary liquidation by the act of its shareholders, owning at least two-thirds of its stock, or otherwise dissolved by authority of law."

In witness whereof, we, the undersigned, have hereunto set our hands.

Date. 1894.	Name.	Address.	No. share.
Feb. 21st.	I. M. Schumacher	Jacksonville	236½
Feb. 21st.	R. C. Cooley	Jacksonville	10
Feb. 21st.	F. E. Harvey, by R. C. Cooley, att'y.	Buffalo, N. Y	100
Feb. 21st.	E. P. Dismukes, by R. C. Cooley, att'y.	Ocala, Fla	27½
Feb. 21st.	C. P. Schumacher, by R. C. Cooley, att'y.	Leadville, Col	1
Feb. 21st.	Mary S. Putnam, by R. C. Cooley, att'y.	Saratoga Sp'gs, N. Y	15
Feb. 21st.	Mary F. Coffin, by R. C. Cooley, att'y.	Lynn, Mass	10
Feb. 21st.	F. M. Schumacher, by R. C. Cooley, att'y.	Cincinnati, O	5
Feb. 21st.	M. M. Schumacher	Cincinnati, O	15
Feb. 21st.	L. Little	Jacksonville	10
Feb. 21st.	John Clark	Jacksonville	10
	Henrietta S. Christopher.	Jacksonville	15
	Total shares		455

To the introduction and consideration in evidence of paragraph 4, of the said stipulations and the amendment to articles of association, the defendants by their attorney then and there objected on the ground that the defendant, Henrietta S. Christopher, was a married woman, and that her signature to the paper entitled "Amendment to the articles of association," without the signature of her husband, or consent otherwise shown in writing and without same being separately acknowledged by her, according to the statutes of Florida, in such case made and provided, was not legally binding upon her so as to charge her or her separate estate or property in any way or manner whatsoever in this action or to constitute her a shareholder in said bank, subject to any liability which could be enforced against her or her property by personal judgment.
26 But the said judge, considering the same, then and there rendered and delivered his ruling and judgment upon said objection and overruled the same, and permitted the same, section 4

of the stipulations, and said "Amendment to the articles of association" in evidence, to which ruling and decision of said judge, the defendant by its attorney did then and there except, and the defendants to prove the issues in their behalf offered in evidence and introduced so much of the said stipulations, so agreed upon and filed by the counsel as the evidence in said case, which reads as follows:

That the defendant, Henrietta S. Christopher, is a married woman, the wife of John G. Christopher, the defendant, and has been his wife since the year 1881, and a citizen of the State of Florida. That she was the daughter of R. M. Schumacher, who owned 75 shares of said stock in said bank, and that he died in the year 1886, testate, bequeathing by his will, one-fifth of his stock to his daughter, and on the 15th day of November, 1887, the executors of said will caused the one-fifth part, or 15 shares, of said stock to be transferred to Henrietta S. Christopher, on the books of said bank without any request or direction on her part. That she has never subscribed for any stock in said bank, or caused her name to be entered on the bank's books as such, or knew of same until the stock had been issued and delivered to her.

And the said parties having concluded their said testimony, the defendants then and there entered their demurrer to the evidence and moved to strike the same on the ground that this was a common law proceeding brought against a married woman, a citizen of the State of Florida, in the State of Florida, and that under the constitution and laws of the State of Florida that no personal judgment could be rendered against her in such action, and that this court must be governed by the mode and manner of procedure including the power to render judgment, pertaining to common law causes, according to the law and procedure governing the courts of the State of Florida, which must be followed by this court.

And this court had no power and was without jurisdiction, as the State court would have no power and would be without jurisdiction to render any judgment against her in this action, which said judgment would of necessity be a personal money judgment against a married woman;

But the said judge then and there considering the same, did decide and render his said judgment that the said demurrer of the defendants, and motion to strike was not well taken and should be denied and overruled and then and there did deny and overrule the same and refused to grant the said motion or sustain the
27 said demurrer, to which rulings and decisions of the said judge, the defendants, by their attorney, did then and there except;

And the said parties having concluded their testimony and submitted the same to the said judge for his decision and judgment thereon without the intervention of a jury, a jury being expressly waived by the parties by stipulation in writing, the said judge did then and there upon the trial of said cause and at the term of court

aforesaid, find and file his special findings both of fact and of law, which said special findings are in the words and figures following, to-wit:

Now this cause coming on to be heard before the court upon stipulation of the parties in writing waiving a jury and an agreed stipulation as to the evidence, oral and documentary, on behalf of the plaintiff and defendant having been introduced, weighed and considered, and the court having duly considered the law and facts and being fully advised in the premises, it finds as matters of fact:

First. That the defendant, Henrietta S. Christopher, was at the time of the failure insolvency and putting into the hands of a receiver of said First National Bank of Florida, a shareholder in said First National Bank of Florida, of fifteen shares of said stock of the par value of fifteen hundred dollars ($1500.00);

Second. That the defendant, Henrietta S. Christopher, was at the time of the failure insolvency and putting into the hands of a receiver of said First National Bank of Florida, to-wit, on the 14th day of March, A. D. 1903, and before and at the time of acquiring of said stock, and now is, a married woman and a citizen of the State of Florida, and that said stock came to her by the will of her father;

Third. That the Comptroller of the Treasury in accordance with the law, did on the first day of April, A. D. 1903, make an assessment of the full par value upon each share of said stock to the amount of fifteen hundred dollars ($1500.00).

And the court finds as matters of law:

That said defendant, Henrietta S. Christopher, being a shareholder of said First National Bank of Florida, was subject to all the liabilities of shareholders in said bank;

And the court finds for the plaintiff herein and assesses the damages against the said defendant, Henrietta S. Christopher, in the full sum of sixteen hundred and sixty dollars ($1660.00).

Jacksonville, Florida, July 1st, 1904.

(Signed) JAMES W. LOCKE, Judge.

28 And the said judge having made his special findings of facts and law and having found for the plaintiff herein, the said defendants being dissatisfied with the said findings, filed on to-wit, at the same term of the court aforesaid, on the 4th day of July, A. D. 1904, their motion in arrest of judgment and for a new trial which is in the words and figures following to-wit:

In District Court of the United States, Southern District of Florida.

JOSEPH W. NORVELL, as Receiver, etc.,
vs.
HENRIETTA S. CHRISTOPHER ET AL.

And now comes the defendant, Henrietta S. Christopher, by her attorney, H. H. Buckman, and moves the court in arrest of judgment for a new trial upon the following grounds:

First. That the finding of the court that the plaintiff is entitled to judgment is contrary to law.

Second. That the finding by the court that the defendant was a shareholder in the First National Bank of Florida within this, the legal sense and meaning of that term is contrary to law and the facts.

Third. That the action of the court in directing and entering judgment for the plaintiff is contrary to law.

Fourth. That it appears clearly in and by the pleadings and the testimony submitted to the court that the defendant, Henrietta S. Christopher, was and is a married woman, and was at the time she acquired title to the said stock, and that the finding of the court against her and for judgment against her is contrary to the law and the evidence.

Fifth. That it appears by the testimony and the pleadings that at the time of the commencement and rendition of the judgment that the defendant in this proceedings and at the time of acquiring said stock, the defendant, Henrietta S. Christopher, was a married woman, and as such is exempt under the constitution and the laws of the State from having any personal judgment rendered against her.

5½. That the court erred in refusing the motion to strike the testimony and render judgment for the defendants.

Sixth. That the law and the procedure of the State of Florida in common law cases which this court is bound to follow, prohibit the rendition of any personal judgment against a married woman,
29 and that the finding against her and the directing of judgment against her by the court is contrary to law.

Seventh. That the court exceeded its jurisdiction and power in finding for the plaintiff and directing judgment against the defendant.

Eighth. That by the constitution and the laws of the State of Florida all the property of a married woman is her separate property and cannot be levied upon or taken in execution under any personal judgment rendered against her, and that the entry of judgment by the court and the direction for the issuance of execution to be levied out of her property is beyond the jurisdiction of this court and void.

And for these and other errors appearing upon the face of the said proceedings and record

Defendant here moves that the said judgment be arrested or if already entered, that the same be vacated; that a new trial be granted and execution be stayed.

H. H. BUCKMAN,
Def'ts' Attorney.

You will please take notice that we will call up the above motion for hearing on the 5th day of July, A. D. 1904, at 10:00 a. m.,

before the judge of said court, or as soon thereafter as counsel can be heard.

H. H. BUCKMAN,
Def'ts' Attorney.

To D. U. Fletcher, Esq., pl't'ff's attorney.

And thereafter at the same term of court aforesaid, the same motion in arrest of judgment and for a new trial came on to be heard before the said judge and thereupon the said judge then and there did decide that the said motion should not be granted, and overruled the same; to which ruling and decision of the said judge, the said defendants did then and there, by their attorney, except.

Thereupon the court aforesaid, on the 6th day of July, A. D. 1904, at the term aforesaid, did render judgment in favor of said plaintiff and against the said defendants for the sum of sixteen hundred and sixty dollars ($1650.00) damages and — costs, as appears of record; and inasmuch as the said several matters objected to or insisted upon and considered by the court do not appear by the record of the findings and judgment aforesaid, the said defendants by their attorney aforesaid, by virtue of a special order made by the said judge during the term aforesaid, on to-wit, on the 6th day of July, A. D. 1904, granted time in which to prepare and have settled and allowed, the bill of exceptions prayed herein, and propose this, their bill of exceptions to the said opinions and decisions of the said judge and request him to sign the same according to the statute and rules and practice in such case made and provided.

And thereupon the said judge at the term aforesaid, did sign, settle and certify the foregoing as the said bill of exceptions by the order following, to-wit:

In the Circuit Court of the United States, Fifth Circuit, Southern District of Florida.

JOSEPH W. NORVELL, as Receiver of First National Bank of Florida,
vs.
HENRIETTA S. CHRISTOPHER and JOHN G. CHRISTOPHER, Her Husband.

This cause having been brought on regularly before this court on this 26 day of August, A. D. 1904, upon the application of the defendants for the settling and certifying of the proposed bill of exceptions lately filed herein, and the time for such settling and certifying of said bill of exceptions having been duly extended by order of this court until and including this day.

And it appearing that due notice has been given to the plaintiff and his attorney of the application of this order and the settlement of the said bill of exceptions.

And it appearing that the same is correct and contains all the testimony taken and considered at the trial of said cause, and all the

exceptions and objections thereto and the proceedings taken in that regard by and on behalf of the defendants, at the said trial, together with a correct transcript of the special findings of the fact- and law made by the judge of said court, said cause being tried without the intervention of a jury and with a motion for an arrest of judgment and for a new trial, and the order overruling the same.

Now, therefore, on motion of H. H. Buckman, Esq., defendants' attorney, it is ordered: That the said bill of exceptions heretofore filed by defendants in this cause, be, and it is hereby settled as the true bill of exceptions in said cause.

And that the same as so settled be now and here certified accordingly by the undersigned, the judge of this court, who presided at the trial of this cause.

31 And that said bill of exceptions as so certified be filed by the clerk. I further certify that said bill of exceptions contains all the evidence adduced upon the trial of said cause.

Aug. 26, 1904.

JAMES W. LOCKE, Judge, etc. [SEAL.]

In the Circuit Court of the United States, Fifth Circuit, Southern District of Florida.

JOSEPH W. NORVELL, as Receiver of First National Bank of Florida,
vs.
HENRIETTA S. CHRISTOPHER and JOHN G. CHRISTOPHER, Her Husband.

Please take notice:

That on August 26th, 1904, we will present to the Honorable J. W. Locke, judge of said court, who presided at the trial of the said cause, the bill of exceptions, prepared and filed herein, and ask for an order declaring & settling the same as the true bill of exceptions in said cause.

H. H. BUCKMAN,
Defendants' Attorney.

To D. U. Fletcher, Esq., plaintiff's attorney.

Service of the foregoing notice, together with copy of proposed bill of exceptions, received and accepted this 24th day of August, A. D. 1904.

I have examined the same and the same containing a true statement of all the evidence adduced and considered at the trial of said cause and of the exceptions and motions made by the defendants pending & after the said trial, I make no objection to the signing, certifying and settling of the same by the judge of said court.

D. U. FLETCHER,
Plaintiff's Attorney.

(Indorsed:) "No. 251. 14. L. 3. In circuit court of the U. S., southern district of Florida. Jos. W. Norvell, receiver, *vs.* Henrietta S. Christopher *et al.* Bill of exceptions. Received for filing Aug. 26th, 1904. Filed Sept. 6th, 1904. E. O. Locke, clerk."

32 UNITED STATES OF AMERICA, *ss*:

The President of the United States to the honorable the judges of the circuit court of the United States for the fifth circuit, southern district of Florida, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Joseph W. Norvell, as receiver of the First National Bank of Florida, and Henrietta S. Christopher and John G. Christopher, a manifest error hath happened, to the great damage of the said Henrietta S. Christopher and John G. Christopher, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the U. S. circuit court of appeals, fifth circuit, together with this writ, so that you may have the same at New Orleans, La., on the third day of October, 1904, in the said appellate court, to be then and there held, that the record and proceedings aforesaid being inspected, the said U. S. circuit court of appeals, may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the sixth day of September, in the year of our Lord one thousand nine hundred and four.

E. O. LOCKE,

[SEAL.] Clerk U. S. Circuit Court, Southern District of Florida.

Allowed by
JAMES W. LOCKE, Judge.

(Indorsed:) Filed Sept. 6, 1904, in U. S. circuit court, southern district of Florida. E. O. Locke, clerk.

33 UNITED STATES OF AMERICA, *ss*:

To Joseph W. Norvell, as receiver of the First National Bank of Florida, Greeting:

You are hereby cited and admonished to be and appear at a circuit court of appeals of the United States, to be holden at New Orleans, La., on October 3d, 1904, pursuant to a writ of error, filed

in the clerk's office of the circuit court of the United States, for the southern district of Florida, wherein Henrietta S. Christopher and John G. Christopher are plaintiffs in error against you, to show cause, if any there be, why the judgment in the said writ of error mentioned, entered on the sixth day of July, A. D. 1904, should not be corrected, and speedy justice should not be done to the parties on that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this sixth day of September, in the year of our Lord one thousand nine hundred and four.

[SEAL.] JAMES W. LOCKE, Judge.

Attest: E. O. LOCKE,
Clerk U. S. Circuit Court, Southern District of Florida.

(Indorsed:) "U. S. circuit court of appeals, fifth circuit. Henrietta S. Christopher & John G. Christopher, pl'ffs in error, *vs.* Joseph W. Norval, as receiver of the First National Bank of Florida. Citation. Filed Sep. 13, 1904. E. O. Locke, clerk. U. S. circuit —, southern district of Florida."

(Indorsed:) "Service of the within citation accepted, without waiver of objections to writ of error. D. U. Fletcher, attorney for plaintiff, Jos. W. Norvell, or def't in error."

34 U. S. Circuit Court, Fifth Circuit, Southern District of Florida.

JOSEPH W. NORVELL, as Receiver of the First National Bank of Florida, a Corporation under the Laws of the United States of America,
vs.
HENRIETTA S. CHRISTOPHER and JOHN G. Christopher, Her Husband.
} No. 251. At Law.

I, Eugene O. Locke, clerk of the said court, hereby certify that the foregoing typewritten, printed and written pages and part pages numbered from "1" to "41," inclusive, *is* a full, true and correct transcript and copy of the record, assignments of errors, bill of exceptions, and all the proceedings in the above entitled cause, lately adjudicated in said court, as the same remains on file and of record in my office at Jacksonville, Florida.

In testimony whereof I hereunto set my hand officially, and affix the seal of said court at Jacksonville, in said district, this fifteenth day of September, A. D. 1904.

[SEAL.] EUGENE O. LOCKE, Clerk.

35 On the 31st day of December, A. D. 1904, a certificate of the clerk of the circuit court of the United States for the southern district of Florida as to correction of transcript was filed in said cause in words and figures following, to-wit:

U. S. Circuit Court, Fifth Circuit, Southern District of Florida.

JOSEPH W. NORVELL, Receiver, &c.,
vs.
HENRIETTA S. CHRISTOPHER ET AL. } No. 251. At Law.

I, Eugene O. Locke, clerk of said court hereby certify that in the transcript of record to the circuit court of appeals in said cause, the following error in transcribing the "judgment" appears: *i. e.* on page 20 of said transcript, and page 16 printed record (No. 1414) the words "and John G. Christopher" following the words "Henrietta S. Christopher" (8th line, page 16, printed record) improperly appear as above: the judgment as shown from the original record being against Henrietta S. Christopher, only: and the words "and John G. Christopher" should be stricken from line 8, page 16, printed transcript of record.

In testimony whereof I hereunto set my hand officially, and affix the seal of said court at Jacksonville, in said district, this twenty-fourth day of December, A. D. 1904.

[SEAL.] EUGENE O. LOCKE, Clerk.

The foregoing has the following endorsements, to-wit:

Henrietta S. Christopher *et al. vs.* Joseph W. Norvell, receiver, etc. No. 1414 Correction of transcript. Filed 31 day of Dec. 1904, Charles H. Lednum, clerk of the United States circuit court of appeals.

36 And on Jan. 2, 1905, an agreement of counsel as to corrections in transcript of record was filed in said cause in words and figures following, to-wit:

In the United States Court of Appeals, Fifth Circuit.

HENRIETTA S. CHRISTOPHER ET AL., Plaintiffs in Error,
vs.
JOSEPH W. NORVELL, Defendant in Error. } Record # 1414.

We, the undersigned, counsel and attorneys, representing respectively the plaintiffs in error and defendant in error in the above entitled cause, do hereby consent and agree, that;

Whereas, an error appears in the transcript and printed record of said cause filed in this case in the entry of the judgment which appears on page 20 of the clerk's record, and page 16, of the printed record, and which error consists in the improper adding of the words, "*and John G. Christopher*" immediately after the words "Henrietta S. Christopher,"

Whereas, said error is evidently a clerical error, made by the clerk of the lower court in copying said entry, and he has certified that

such is an error, and that the original judgment was only rendered and reads, as appears of record in the court below, "against Henrietta S. Christopher;"

We, desiring that said error should be corrected, do hereby agree that the addition of the words "and John G. Christopher" in the said entry of the said record in this court is an error;

And that said words should be stricken out;

And we do hereby authorize the clerk of this, the court of appeals, to erase from said records on the pages aforesaid, the said words "and John G. Christopher" in the entry of said judgment, and do hereby agree that the said record with the said words so erased and stricken therefrom, is the record in said cause.

H. H. BUCKMAN,
Attorney for Plaintiffs in Error.
D. U. FLETCHER,
Attorney for Defendant in Error.

37 December 27, A. D. 1904.

U. S. Circuit Court. Fifth Circuit, Southern District of Florida.

JOSEPH W. NORVELL, Receiver, &c.,
vs.
HENRIETTA S. CHRISTOPHER ET AL. } No. 251. At Law.

I, Eugene O. Locke, clerk of said court hereby certify that in the transcript of record to the circuit court of appeals in said cause, the following error in transcribing the "judgment" appears: *i. e.* on page 20 of said transcript, and page 16 printed record (No. 1414) the words "and John G. Christopher" following the words "Henrietta S. Christopher" (8th line, page 16, printed record) improperly appear as above; the judgment as shown from the original record being against Henrietta S. Christopher only: and the words "and John G. Christopher" should be stricken from line 8, page 16, printed transcript of record.

In testimony whereof I hereunto set my hand officially, and affix the seal of said court at Jacksonville, in said district, this twenty-fourth day of December, A. D. 1904.

[SEAL.] EUGENE O. LOCKE, Clerk.

The foregoing has the following endorsements, to-wit:

No. 1414. In the U. S. court of appeals, 5th circuit. Henrietta S. Christopher, *et al.*, pl'ff's in error, *vs.* Joseph W. Norvell, def't in error. Agreement as to corrections in record. U. S. circuit court of appeals. Filed Jan. 2, 1905. Charles H. Lednum, clerk.

38 Argument and Submission.

HENRIETTA S. CHRISTOPHER ET AL.
vs.
JOSEPH W. NORVELL, Receiver. } No. 1414.

JAN. 4, 1905.

On this day this cause was regularly called, and after argument by H. H. Buckman, Esq., for plaintiffs in error, was continued until tomorrow for further hearing.

JAN. 5, 1905.

HENRIETTA S. CHRISTOPHER ET AL.
vs.
JOSEPH W. NORVELL, Receiver. } No. 1414.

On this day this cause was called for further hearing, and after argument by D. U. Fletcher, Esq., for defendant in error, and H. H. Buckman, Esq., for plaintiffs in error, was submitted to the court.

And thereafter, on January 24th, 1905, an opinion of said *court* circuit court of appeals was filed in said cause in words and figures following, to-wit:

39 Filed January 24, 1905. Charles H. Lednum, Clerk.

United States Circuit Court of Appeals, Fifth Judicial Circuit, November Term, 1904.

HENRIETTA S. CHRISTOPHER ET ALS.
v.
JOSEPH W. NORVELL, Receiver. } No. 1414.

Error to the Circuit Court of the United States, Southern District of Florida.

Before Pardee, McCormick, and Shelby, Circuit Judges.

By the COURT:

The plaintiff in error, Henrietta S. Christopher, wife of John G. Christopher, was a stockholder in the First National Bank of Florida, and as such stockholder was liable under the statutes of the United States for the assessment made by the Comptroller of the Currency on the stockholders of said bank. See secs. 5151–5234, R. S. U. S.

Even if a defense on such line would avail the plaintiff in error, we find nothing in the laws of Florida disabling married women from owning in their own right stock in national banking associations and incurring the liabilities resulting therefrom.

On the whole case we conclude there was no error in the judg-

ment of the circuit court: See Keyser *v.* Hitts, 133 U. S. 139. And we say as said by the Supreme Court in that case, "But the question as to what property may be reached in the enforcement of such judgment is not before us, and we express no opinion on it."

The judgment of the circuit court is AFFIRMED.

40 And on the 24th day of January, A. D. 1905, in the record and proceedings of said circuit court of appeals is a judgment in said cause in the words and figures following, to-wit:

HENRIETTA S. CHRISTOPHER ET AL.
vs.
JOSEPH W. NORVELL, Receiver. } No. 1414.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of Florida, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby affirmed.

It is further ordered and adjudged that the plaintiffs in error, Henrietta S. Christopher and John G. Christopher, and the sureties on the writ of error bond herein, George W. Parkhill and Jos. H. Crosby, be condemned to pay the costs of this cause in this court, for which execution may be issued out of said circuit court.

Jan. 24, 1905.

41 And thereafter on February 16, 1905, an order of said circuit court of appeals staying the issuance of mandate, was entered in said cause in words and figures following, to-wit:

Order Staying Mandate.

HENRIETTA S. CHRISTOPHER
vs.
JOSEPH W. NORVELL, Receiver. } No. 1414.

Ordered that the issuance of mandate in this cause be, and it is hereby stayed for ten days.

42 In the United States Circuit Court of Appeals, 5th Circuit.

JOSEPH W. NORVELL, as Receiver,
vs.
HENRIETTA S. CHRISTOPHER & JOHN G. CHRISTOPHER.

Petition for Writ of Error to the Supreme Court of the United States.

Come now the defendants, Henrietta S. Christopher and John G. Christopher, defendants in the above entitled cause, who feeling

themselves aggrieved by the findings and judgment of the circuit court of the United States in and for the southern district of Florida, pronounced and rendered on the 6th day of July 1904, and the judgment upon a writ of error from said judgment to and by the United States circuit court of appeals in and for the 5th circuit, pronounced and rendered on the 24th day of January, A. D. 1905, affirming the judgment of said circuit court of the United States, and petition said circuit court of appeals for an order allowing the said defendants to prosecute a writ of error to the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided;

And that an order may be made fixing the amount of security these petitioners defendants shall give and furnish upon the said writ of error;

And that upon the giving of the same all further proceedings of said circuit court of appeals and the said circuit court of the United States be stayed and suspended until the determination of said writ of error by the Supreme Court of the United States aforesaid; and your petitioners will ever pray, etc.

H. H. BUCKMAN,
Attorney for Defendants, Petitioners.

The foregoing has the following endorsements, to-wit:
No. 1414. In United States circuit court of appeals, 5th circuit. Joseph W. Norvell, receiver etc. *vs.* Henrietta S. Christopher & John G. Christopher. Petition for writ of error. U. S. circuit court of appeals. Filed Feb. 28, 1905, Charles H. Lednum, clerk.

43 Assignments of Error.

In the Supreme Court of the United States.

JOSEPH W. NORVELL, Receiver, etc.,
vs.
HENRIETTA S. CHRISTOPHER & JOHN G. CHRISTOPHER.

Come now Henrietta S. Christopher and John G. Christopher, defendants in the above entitled cause named and file the following assignments of error upon which they will rely upon their prosecution of the writ of error prayed for and taken herein to the Supreme Court of the United States, to-wit:

I.

That the United States circuit court of appeals in and for the 5th circuit erred in rendering judgment of affirmance of the judgment rendered by the circuit court of the United States in and for the southern district of Florida, which said judgment was a personal money judgment against Henrietta S. Christopher, a married woman, resident and citizen of the State of Florida in a proceeding at law prohibited by the constitution and laws of the said State;

II.

That said United States circuit court of appeals in and for the 5th circuit erred in not rendering a judgment, reversing the judgment of the circuit court of the United States in and for the southern district of Florida, said lower court being without jurisdiction to render such judgment against the defendant Henrietta S. Christopher in the State of Florida, she being then and there a married woman, and the same being in a proceeding at law governed by the laws, rules and procedure in force in said State which prohibits the same;

III.

That the defendant Henrietta S. Christopher being a married woman, a resident and citizen of the State of Florida and
44 under the common law disabilities still existing by the constitution and laws of said State in which said alleged liability accrued, said proceedings were instituted, and said judgment rendered, was not in contemplation of the law, or within the meaning of the acts of Congress known as the national banking act, a shareholder in the First National Bank of Florida within the contemplation of the liability clause of the said act, so as to render her personally, or her property, which by the constitution of Florida is declared her separate estate, liable to an assessment under such act upon any shares of stock owned by her at the time of the insolvency of the said bank and appointment of its receiver, and the said circuit court of the United States for the southern district of Florida, committed reversible error in rendering such judgment against her therefor, and said circuit court of appeals in affirming the same;

IV.

That said suit being a proceeding at law and brought in the State of Florida, was controlled by the rules and practice in proceedings at law prescribed by the laws of that State under its constitution which absolutely prohibits and declares null and void any personal money judgment against a married woman; the constitution of which State prohibiting the taking or sequestration of her property which it declares is her separate estate by such means, and the said defendant, Henrietta S. Christopher having pleaded her status and disability as fixed by said constitution and laws, in the said suit, the rendition of the judgment against her therein which is a personal money judgment, by said court and its affirmance by the said — court of appeals was error in the same, being in conflict with the constitution and laws of the State of Florida and the Constitution and laws of the United States and therefore, void.

Wherefore, the said defendants Henrietta S. Christopher and John G. Christopher as plaintiffs in error pray that the judgment of the said circuit court of the United States in and for the
45 southern district of Florida and of the said circuit court of appeals for the 5th circuit affirming the same, be reversed

and that such directions be given that full force and efficacy may enure to these defendants by reason of the defense set up by them in their pleadings in said cause and under the law governing the same.

H. H. BUCKMAN,
Attorney for Defendants & Plaintiffs in Error.

The foregoing has the following endorsements, to-wit:
No. 1414. In the Supreme Court of the United States. Joseph W. Norvell, receiver, etc. *vs.* Henrietta S. Christopher & John G. Christopher. Assignments of error. U. S. circuit court of appeals. Filed Feb. 28, 1905, Charles H. Lednum, clerk.

46 In the Circuit Court of Appeals of the United States, 5th Circuit.

JOSEPH W. NORVELL, Receiver, etc.,
vs.
HENRIETTA S. CHRISTOPHER & JOHN G. CHRISTOPHER.

Know all men by these presents: That we Henrietta S. Christopher and John G. Christopher as principals, and R. G. Ross — Joseph H. Crosby as sureties are held and firmly bound unto Joseph W. Norvell as receiver of the First National Bank of Florida and his successor in office in the sum of two thousand dollars ($2000) for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally, firmly by these presents;

Signed and sealed with our seals this 23rd day of February, A. D. 1905.

The condition of the above obligation is such that whereas on the 6th day of July, A. D. 1904, the above named Joseph W. Norvell, as receiver of the First National Bank of Florida, recovered a judgment against the above bounden Henrietta S. Christopher in the circuit court of the United States for the southern district of Florida, for the sum of sixteen hundred and sixty dollars ($1660) and the said Henrietta S. Christopher and John G. Christopher being dissatisfied with said judgment and having prayed for and taken their writ of error therefrom to the circuit court of appeals of the United States for the 5th circuit; and the said circuit court of appeals having affirmed the said judgment and the said Henrietta S. Christopher and John G. Christopher being dissatisfied with the same and the judgment of the said court of appeals, have prayed for and been allowed a writ of error to the Supreme Court of the United States.

Now if the said Henriette S. Christopher and John G. Christopher shall prosecute such writ of error to effect and if they fail to
47 make good their plea and the said judgment be affirmed by the said Supreme Court, shall pay the same and shall answer

all damages and costs, then this obligation to be void, else to remain in full force and virtue.

JOHN G. CHRISTOPHER. [SEAL.]
HENRIETTA S. CHRISTOPHER. [SEAL.]
R. G. ROSS. [SEAL.]
JOSEPH H. CROSBY. [SEAL.]

STATE OF FLORIDA, County of Duval, } ss:

Personally appeared before me R. G. Ross — Joseph H. Crosby who being each duly sworn, say that they are worth in property in this the southern district of Florida and said State, the sum of two thousand dollars over and above all debts and exemptions allowed by law.

R. G. ROSS.
JOSEPH H. CROSBY.

Sworn to and subscribed before me this 24 day of February, A. D. 1905.

W. D. DE COTTES,
[SEAL.] Notary Public, State of Florida at Large.

Commission expires July 10, 1906.

Approved by me this 28th day of February, A. D. 1905, as a supersedeas bond.

DON A. PARDEE,
United States Circuit Judge.

The foregoing has the following endorsements, to-wit: No. 1414. In circuit court of appeals of the U. S. 5th circuit. Joseph W. Norvell *vs.* Henrietta S. Christopher, *et al.* Supersedeas bond. U. S. circuit court of appeals. Filed Feb. 28, 1905, Charles H. Lednum, clerk.

48 United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 48 pages, numbered from A to 47, inclusive, contain a true copy of the record and of the assignment of errors, and of all proceedings, in the case of Henrietta S. Christopher, *et al.*, plaintiffs in error, *versus* Joseph W. Norvell, receiver, defendant in error, No. 1414, as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, Louisiana, this 7th day of March, A. D. 1905.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court
of Appeals for the Fifth Circuit.

49 UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judges of the circuit court of appeals of the United States for the fifth judicial circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court of appeals of the United States, before you, or some one of you, between Henrietta S. Christopher and John G. Christopher, plaintiffs in error, and Joseph W. Norvell, as receiver of the First National Bank of Florida, defendant in error, a manifest error hath happened, to the great damage of the said Henrietta S. Christopher and John G. Christopher, plaintiffs in error, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, District of Columbia, in not exceeding thirty days from the 28th day of February, 1905, being the date of the issuance of the citation herein, in the Supreme Court of the United States, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 28th day of February, in the year of our Lord one thousand nine hundred and five.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals.

Allowed by
DON A. PARDEE,
United States Circuit Judge.

It is hereby certified a this copy of this writ is this day lodged in the clerk's office for the use of the defendant in error, 28th day of February, 1905.

CHARLES H. LEDNUM, Clerk.

50 [Endorsed:] No. 1414. Henrietta S. Christopher, *et al.*, *vs.* Joseph W. Norvell, receiver. Writ of error. U. S. circuit court of appeals, Filed Feb. 28 1905 Charles H. Lednum, clerk.

51 UNITED STATES OF AMERICA, ss:

The President of the United States to Joseph W. Norvell, receiver of the First National Bank of Florida, and Duncan U. Fletcher, his attorney of record, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, District of Columbia, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the circuit court of appeals of the United States for the fifth judicial circuit, wherein Henrietta S. Christopher and John G. Christopher are plaintiffs in error, and Joseph W. Norvell, receiver of the First National Bank of Florida, is defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 28th day of February, A. D. 1905.

DON A. PARDEE,
United States Circuit Judge.

52 [Endorsed:] Service accepted this March 3–1905—without prejudice or waiver of right to object to procedure. Jos. W. Norvell receiver 1st Nat. Bank Florida. D. U. Fletcher attorney receiver 1st Nat. Bank Florida. U. S. circuit court of appeals. Filed Mar. 6–1905. Charles H. Lednum clerk.

Endorsed on cover: File No. 19,679. U. S. circuit court of appeals, 5th circuit. Term No. 211. Henrietta S. Christopher and John G. Christopher, plaintiffs in error, *vs.* Joseph W. Norvell, receiver of the First National Bank of Florida. Filed March 23d, 1905. File No. 19,679.

FILE COPY.

Office Supreme Court U. S.
FILED
FEB 24 1906
JAMES H. MCKENNEY, Clerk.

In Supreme Court of the United States

OCTOBER TERM 1905.

No. 211.

HENRIETTA S. CHRISTOPHER, ET AL.,
Plaintiffs in Error,

vs.

JOSEPH W. NORVELL, Receiver,
Defendant in Error.

BRIEF OF H. H. BUCKMAN,
For Plaintiffs in Error.

In Error to the United States Circuit Court of Appeals
For the Fifth Circuit.

The Floridian

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1905.

HENRIETTA S. CHRISOPHER, ET AL.,
Plaintiffs in Error.
vs.
JOSEPH W. NORVELL, Receiver,
Defendant in Error.

BRIEF OF H. H. BUCKMAN FOR PLAINTIFFS IN ERROR.

This was an action brought by the defendant in error against the plaintiffs in error, in the Circuit Court of the United States for the Fifth Circuit in the Southern District of Florida, on *the common law side of that Court.*

STATEMENT OF THE CASE.

In the year 1886 one R. M. Schumacher, the owner of seventy-five shares of the capital stock of the First National Bank of Florida (a corporation incorporated under the National Banking Act, and located and doing business in the State of Florida), died testate, and, among other bequests, bequeathed by his will to his daughter Henrietta S. Christopher (plaintiff in error here), who was at that time and still is the wife of the co-defendant (co-plaintiff in error), John G. Christopher (both of whom were at that time, and still are, residents and citizens of the State of Florida), one-fifth of his stock holdings in said Bank, which amounted to fifteen shares.

That thereafter his executors caused the stock holdings of the testator to be divided, and said Bank to issue a certificate for fifteen shares of said stock to, and in the name of, the said Henrietta S. Christopher, and caused the same to be delivered to her.

She had no knowledge of the transaction until the said stock was delivered to her.

After the receipt of the stock she received several dividends on the same, in checks made payable to her order, which she personally cashed.

Some time after the receipt of the stock, an application was made to have the charter of the Bank amended, and she personally signed the same. In this her husband did not join her, nor was the same acknowledged or otherwise authenticated by her.

In 1903 the Bank became insolvent. The defendant in error was appointed receiver, the Comptroller of the Currency caused an assessment on the stock, of one hundred cents on the dollar, to be made, notice of which and request for payment was made to and made upon Henrietta S. Christopher, and by her refused.

This suit was brought for the collection of this assessment.

The husband, John G. Christopher, is and was not connected with the transaction in any way, and is simply a nominal party to the proceedings.

The declaration having shown upon its face that Henrietta S. Christopher was a married woman, the same was demurred to on the ground that the suit being a *common law proceeding*, and the *judgment* to be rendered therein a *personal money judgment against a married woman*, that under the *constitution and laws of the State of Florida* such a suit and judgment was *prohibited*, and for such reason that the Circuit Court of the United States *had no jurisdiction* or power to render *any judgment in the case.*

Printed record, page 5.

The Court overruled the demurrer, which is the first error assigned.

Printed record, page 6.

The defendant then pleaded five pleas.

First.—That she never was indebted.

Fourth.—That she is not and never was, a shareholder in the said Bank, she being a married woman at and before the time of the matters alleged against her.

The second, third and fifth pleas set up, that she never subscribed for, or became the purchaser of, any stock in said Bank; that the stock had been bequeathed to her by her father's will; that she was at the time of the receiving of the same, the bringing of this suit, and still is, a married woman, a citizen and resident of the State of Florida, and that the constitution and laws of the State of Florida prohibit the rendition of any personal judgment against her for money, which would be the result of this action, in consequence of which this Court would have no jurisdiction to entertain or render the same.

Printed record, pages 6-7.

On demurrer to all these pleas (except the first), the Court sustained the same to the second, third and fifth pleas, and overruled the same as to the fourth plea.

Printed record, pages 9-10.

NOTE:—In the printed record, the fourth plea reads, as it was originally pleaded, as follows:

"And for a further plea, defendants say that the defendant, Henrietta S. Christopher, is not and never was a shareholder in the said First National Bank of Florida, she being a married woman at and before the time of the matters alleged in said declaration against her."

In overruling the demurrer to this plea the Court, of its own motion, struck out with a pencil, as appears by the original record in the Clerk's office, so much of said plea as reads as follows:

"She being a married woman at and before the time of the matters alleged in the said declaration against her."

Being all of the said plea after the word "Florida," and after he had so stricken this out he overruled the demurrer to the remaining portion of the plea, that "she was not a shareholder."

This explanation is made in order that the record may speak the fact, show the actual action of the Court, and the reason for one of the assignments of error.

Record page 7.

The sustaining of this demurrer is the next ground of error assigned.

The plaintiffs then joined issue on the first and fourth pleas.

Printed record, page 10.

The cause was then tried before the Court without the intervention of a jury, a jury being waived by special stipulation.

Printed record, page 10.

The cause was tried before the Court on an agreed statement of facts.

Printed record, pages 18-22.

The Court made a special finding of facts and law.

FINDING AS TO THE FACTS.

That Henrietta S. Christopher was a shareholder in said Bank for fifteen shares of stock of the par value of Fifteen Hundred ($1,500.00) Dollars; that an as-

sessment of the full par value of the stock was duly made, which amounted to Fifteen Hundred ($1,500.00) Dollars; and that the said Henrietta S. Christopher was at and before the time of the acquiring of the stock, at the time of the failure, insolvency, and putting in the hands of a receiver of the Bank, and still was, a married woman, a citizen of the State of Florida, and that said stock came to her by the will of her father.

Record page 23.

AND AS A MATTER OF LAW.

That she being a shareholder was subject to all the liabilities of shareholders in said Bank.

Record page 23.

And found for the plaintiff in the sum of Sixteen Hundred and Sixty ($1,660.00) Dollars.

Record page 23.

In the agreed statement of facts it was stipulated that either party might have a right to object to any of the evidence, and defendant Christopher did object to the consideration by the Court of so much of the stipulation introduced by the plaintiff as tended to show the alleged participation of Henrietta S. Christopher in an application for an amendment to the charter of the Bank; to the amendment of the articles of the association offered in evidence; and to paragraph 4 of the stipulation, reciting that she had signed the same.

Printed record, pages 21.

This contention the Court overruled, which was excepted to and is assigned as error.

Printed record, page 21-22.

After the evidence had been introduced, defendant Christopher demurred to the evidence, moved to strike out the same, and for judgment on the ground that this was a common law proceeding against a married woman, the result of which must be a personal money judgment, prohibited by the constitution and laws of Florida, and that this Court was without jurisdiction to entertain or render the same.

Printed record, page 22.

The Court overruled and denied the same, which was excepted to, and which is assigned as error.

Printed record, page 22.

After the rendition and filing of the special findings of law and fact by the Court, defendants made motion for a new trial and in arrest of judgment, which upon hearing was overruled, and to which defendants excepted, which is made ground of error.

Printed record, pages 23-24-25.

The Court then rendered judgment against Mrs. Christopher. Record, page 10.

Defendants then prosecuted their writ of error to this Court with bill of exceptions.

Printed record, pages 37-25-26-32-33.

And assign error as follows:

IN THE SUPREME COURT OF THE UNITED STATES.

JOSEPH W. NORVELL, Receiver, etc.,

vs.

HENRIETTA S. CHRISTOPHER &
JOHN G. CHRISTOPHER.

ASSIGNMENTS OF ERROR.

Come now Henrietta S. Christopher and John G. Christopher, defendants in the above entitled cause named and file the following assignments of error upon which they will rely upon their prosecution of the writ of error prayed for and taken herein to the Supreme Court of the United States, to-wit:—

I.

That the United States Circuit Court of Appeals in and for the 5th Circuit erred in rendering judgment of affirmance of the judgment rendered by the Circuit Court of the United States in and for the Southern District of Florida which said judgment was a personal money judgment Henrietta S. Christopher, a married woman, resident and citizen of the State of Florida, in a prcoeeding at law prohibited by the constitution and laws of the said State:

II.

That said United States Circuit Court of Appeals in and for the 5th Circuit erred in not rendering a judgment, reversing the judgment of the Circuit Court of the United States in and for the Southern District of Florida, said lower Court beng without jurisdiction to render such judgment against the defendant Henrietta S. Christopher in the State of Florida, she being then and there a married woman, and the same being in a proceeding at law governed by the laws, rules and procedure in force in said State which prohibits the same.

III.

That the defendant Henrietta S. Christopher being a married woman, a resident and citizen of the State of Florida and under the common law disabilities still existing by the constitution and laws of said State in which said alleged liability accrued, said proceedings

were instituted; and said judgment rendered, was not in contemplation of the law, or within the meaning of the Acts of Congress known as the National Banking Act, a shareholder in the First National Bank of Florida within the contemplation of the liability clause of the said Act, so as to render her personally, or her property, which by the constitution of Florida is declared her separate estate, liable to an assessment under such Act upon any shares of stock owned by her at the time of the insolvency of the said bank and appointment of its receiver, and the said Circuit Court of the United States for the Southern District of Florida, committed reversible error in rendering such judgment against her therfor, and said Circuit Court of Appeals in affirming the same;

IV.

That said suit being a proceeding at law and brought in the State of Florida, was controlled by the rules and practice in proceedings at law prescribed by the laws of that State under its constitution which absolutely prohibits and declares null and void any personal money judgment against a married woman; the constitution of which State prohibiting the taking or sequestration of her property which it declares is her separate estate by such means, and the said defendant, Henrietta S. Christopher having pleaded her status and disability as fixed by said constitution and laws, in the said suit, the rendition of the judgment against her therein which is a personal money judgment, by said Court and its affirmance by the said Court of Appeals was error in the same, being in conflict with the constitution and laws of the State of Florida and the Constitution and laws of the United States and therefore, void.

WHEREFORE, the said defendants Henrietta S Christopher and John G. Christopher as plaintiffs in

error pray that the judgment of the said Circuit Court of the United States in and for the Southern District of Florida and of the said Circuit Court of Appeals for the 5th Circuit affirming the same, be reversed and that such directions be given that full force and efficiency may enure to these defendants by reason of the defense set up by them in their pleadings in said cause and under the law governing the same.

H. H. BUCKMAN,
Attorney for defendants & Plaintiffs in Error.
Printed record pages 33-35.

BRIEF OF THE ARGUMENT.

In order to maintain this judgment it must he held either A:—that the relaton of the *stockholder* is not contractual or, B:—that the *Act of Congress* called the "National Banking Act" *is paramount* to the *constitution and laws of a State.*

If the liability is to be determined by the Act then it must turn upon the correct legal definition of the terms *"persons"* and *"shareholders"*.

This Act provides as follows:
Only *"natural persons"* can be incorporators.
Section 5139 of Revised Statutes.

Section 5139 provides as to the division of the capital and that,
Each "person" becoming a "shareholder" shall, etc. * *

Section 5151 provided that
The *"shareholders"* * * * shall be held individually responsible.

Section 5152 provides that

"Persons" holding stock as executors, etc., shall not be personally subject to liabilities as *"stockholders,"* etc.

It has been held that an Act authorizing persons to form a corporation means persons of *full age,* though no age be stated.

Cook on Corporations, 4th Ed., Vol, 1, page 1, note 1.

Re, Globe Asst., 63 Hun., 263.

Cf. Re. Saxon, 1 Ch., 210.

A pledgee of such stock is not liable to such assessment, even though he had caused the stock, for his protection ,to be transferred to him on the books of the bank.

Pauley vs. The State Loan & Trust Co., 165 U. S., 606.

THE TERMS *persons* and *shareholders* are *technical terms* and must be given their accepted legal definitions as defined at the time of the passage of the Act.

The terms used in the Act, therefore, meant and mean,*only* such persons who were sui juris and competent to contract, the Act expressly providing that persons *under disability* might be the *owners* or *holders* of stock through their trustees, guardians, etc., and *yet not liable personally.*

Section 5152 Revised Statutes, U. S.

The relaton between the *shareholders* and the *corporation* is a *contractual one,* and the liability for an assessment upon stock in the case of insolvency is clearly settled to be a liability growing out of a *contract,* and not in the nature of a *penalty.*

Cook on Corporations, 4th Ed., Sec 10, note 1, page 30; note 1, page 31.

Cook on Corporations, 4th Ed., page 420.
Cook on Corporations, Sec. 64, note 3.
Cook on Corporations, Secs. 66, 67, 318, 319, 320.
Godfrey vs. Terry, 97 U. S., 171.
Carroll vs. Green, 92 U. S., 509.
Norris vs. Wrenshall, 34 Md., 492.
Wickson vs. Nesmuth, 46 N. H., 371.
Corning vs. McCullough, 1 N. Y., 47.
Coleman vs. White, 14 Wis. 700.
Huntington vs. Atrill, 146 U. S., 657.
Purdey's Beach on. Corporations, Vol. 2 Sec. 220.

Whether a *liability* exists or not must be determined by the *status* of the persons *at the time*, and according to the *law* of the *place* when the *contract* was made and *not* by the *National Banking Act or the Act creating the corporation.*

Purdy's Beach on Corporations, Vol. 1 Sec. 353.

The competency of a married woman to take, hold and transfer shares of stock is governed by the law of her domicil.

Purdy's Beach on Corporations, Vol. 1, Sec. 390.

Contracts are to be governed by the laws of the place of contrat.

The personal competency or incompetency of persons to contract such as infants, persons under duress or under coverture are to be governed by the law of the place of domicile.

Story on the Conflict of Laws, Secs., 97 and 103. 1 Grant, 51.
Rawles' Bouvier's Law Dictionary, Vol. 2, page 199.

The law of domicile governs the status of the person. 112 U. S., 452.

The domicile of *this corporation*, and that of the *married woman*, were *the same;* to-wit, the *State of Florida.*

Printed Record pages 19 and 22.

A national bank is a citizen of a state where domiciled, and the National Bank of the State of Florida was, therefore, *a citizen of the State of Florida.*

Desty, Vol. 1, Sec., 89.

The action by the receiver in this case is not an action by or for the benefit of the Unted States, but for the benefit of the creditors of the Bank.

Mickland vs. Hall, (Iowa) N. W. Rept., 352.
Micckland vs. Hall, 71 (Iowa) N. W. Rept., 352, 353.

The creditors of the Bank and the receiver stand in the shoes of the Bank and have no greater rights than the Bank would have had in enforcing the collection of its assets. The receiver only holds the estate and title of the Bank.

Caey vs. Credit Mobilia, 2 Woods, 77.
Bushnell vs. LeLand, 164 U. S., 684.

The liability in case of insolvency under the National Banking Act is a statutory liability, and the defenses to this liability are substantially the same as in other cases of statutory liability.

Cook on Corporation, 4th Ed., page 405.

It has been determined by decisions under the National Banking Act, that the relation of the stock holder to the corporation being a contractual relation, that

among other defenses, the statute of limitations, according to the law of the different states, against the claim for such an assessment upon the stock, is a good defense.

Howell vs. Roberts, 29 Neb., 483.
Greenan vs. Palmer, 117 Ill., 619.
Richmond vs. Iron, 121 U. S., 27.
Child vs. Coffin, 17 Mass., 64.
Carroll vs. Green, 92 U. S., 509.
Godfrey vs. Terry, 97 U. S., 171.
Moores vs. Nat. Bank, 104 U. S., 625.

It has been held that where "A" gave a mortgage to a national bank and then a mortgage on the same property to "B" who took it without notice of the first mortgage, that "B" should have preference according to the law of that state.

Bank vs. Whitney, 103 U. S., 130.

The personal competency or incompetency, *i. e.* (status) of parties to a contract can always be set up as a defense to the avoidance of such alleged contract or as to any liability growing out of the same, and this includes idiots, infants, persons under duress, and persons under coverture.

Gould Pleading, pages 257-8.

The liability growing out of a contractual relation could, therefore, not be incurred by a person *incompetent* under the laws of the state where made, to enter into a contract.

No person under legal disability could therefore be included in the legal contemplation of the terms *"persons"* and *"shareholders"* used in the National Banking Act, as such persons would be incapable of entering into the contractual relation in those states or jurisdictions

where those disabilities existed; and at common law neither an infant, a married woman, or a person non compos could make a contract, and could not, therefore, be a shareholder in a corporation

Cook on Corporations, 4th Ed., Secs. 66, 250, 318, 319, 320.

Cook on Corporations, 4th Ed., Vol. 1, page 30, note 1.

9th Ry. and Corpt., L. J. 197.

Parsons on Contracts, Vol. 1, page 369.

Canal Bank vs. Partee, 99 U. S., 325.

The *common law* is still in *force* in *Florida* and a married woman cannot make a contract; and no action at law may be *brought* or *judgment rendered against her.*

THE FOLLOWING IS FROM THE STATUTE OF FLORIDA.

"The common and statute laws of England which are of a general and not of a local nature, with the exception hereinafter mentioned down to the 4th day of July, 1776, be and the same are hereby declared to be in force in this State, provided the same be not inconsistent with the constitution and laws of the United States and the acts of the legislature of this State."

Enacted November 6th, 1829.

And carried forward in the statute books of the State and into the present revised statutes as, Sec. 59, R. S. of Florida.

Hart vs. Bostwock, 14 Fla., 172.

EXTRACTS FROM THE CONSTITUTION OF THE STATE OF FLORIDA.

"All property real and personal of a wife owned by her before marriage or lawfully acquired afterward by gift, devise, bequest, descent or purchase, shall be her separate property, and the same shall not be liable for the debts of her husband without her consent given by some instrument in writing executed according to the laws respecting conveyances by married women."

Sec. 1, Art. 11, Constitution of Florida.

"A married woman's real or personal property *may* be charged in *equity*, and sold or the uses——, rents and profits thereof sequestrated for the *purchase money* thereof, or for money or thing due upon any *agreement* made by *her in writing* for the *benefit of her separate* property; or for the price of any property purchased by her; or for labor and material used with her knowledge or assent in the construction of buildings, or repairs, or improvements *upon her* property, or for agricultural or other labor bestowed thereon, with her knowledge or consent."

Sec. 2, Art. 11, Constitution of Florida.

At common law, a *married woman* could not make a contract and the *State of Florida* having enacted the *common law*, and the same remaining *unchanged* in that *respect* in said State, she is *still incapable* of enterng into a *contract* or of being held for *any personal liability growing out of the same.*

Andrews Am. Law, pages 708—9.
Parsons Conts., 2nd Ed., Vol. 1, page 369.
Parsons Conts., 2nd Ed., Vol. 2, page 688.

The Supreme Court of Florida has so decided.
Dollner vs. Snow, 16 Fla., 86.

The Supreme Court of Florida has decided that a married woman in this State cannot bind her person by contract either at law or in equity.

Dollner vs. Snow, 16 Fla., 86.

That she cannot become a partner.

De Graum vs. Jones, 23 Fla., 83.

That the promissory note of a married woman is void.

Hodges vs. Price, 18 Fla., 342.
Dolner vs. Snow, 16 Fla., 86.
Goss vs. Turner, 21 Fla., 406.
Randall vs. Bougardis, 23 Fla., 264.

All laws passed by State authority not contrary to the constitutional provisions of the United States, are supreme within the States and cannot be gainsaid by the Federal Government.

Sutherland on Statutory Construction, Sec. 21, 22.

We submit that the relation of a shareholder to the corporation is a *contractual one*, and the *liability* sought to be enforced, *a statutory* liability growing out of *contractual* relation and *not a penalty*. And as the *married woman* in this case was *incompetent* to enter into a *contract*, she could incur *no liability*; that corporations incorporated under a National Banking Act or an Act of Congress, are vested with *no greater rights or powers* in this regard than corporations created by or under *the Act of any State*, but that the *liability*, if any, must be determined in all cases by the *law of the place* and the *status of the persons as determined by such laws*; that in this case the *laws of Florida* having fixed the *status of its citizen, a married woman*, as *incompetent* to enter into a *contract, they are the sole criterion*, and have *determined* that *no such liability can exist*.

The cases referred to by counsel for the defendant in error, and which will be insisted upon as holding a contrary opinion, we desire to briefly refer to and discuss. They are as follows:

Witters vs. Sowles, 32 Fed. Rept., 767; 38 Fed. Rept. 700.
Robinson vs. Turrentine, 59 Fed. Rept., 554.
Anderson vs. Line, 14 Fed. Rept., 405.
First National Bank of St. Albans, 49 Fed. Rept., 120.
Bundy vs. Coke, 128 U. S., 185.
Keyser vs. Hitz, 133 U. S., 138.

But none of these cases upon a careful examination affirm any doctrine contrary to the contentions contained in this brief, as we will show.

In Witters vs. Sowles, which arose in the state of Vermont, the district Judge decided, that the assessment *was a penalty* and *did not arise* out of a contract.

It affirms and recognizes, however, the fact that at common law a married woman would not have been liable but she was held liable in that case because *by the laws of Vermont,* she could sue and be sued.

When the case came up in the Circuit Court, see 35 Fed. Rept., 460, that court *overruled* the lower court upon the question that the *liability was a penalty* and *decided* that it *arose out of a contractual relation,* but affirmed the judgment on the ground that under the laws of Vermont a married woman's common law disabilities had been removed.

Another branch of this same case is reported in 38 Fed. Rept., 700, in which the same doctrine was affrmed, holding that by the laws of Vermont, the common law disabilities had been removed.

In Anderson vs. Line which arose in Pennsylvania, the court said it was of the opinion that coverture did

not exempt. The case does not show it, but

Under the laws of Pennsylvania, as in Vermont, the common law disabilities of married women had been removed.

In the First National Bank of St. Albans, the court held the married woman liable, citing the cases above and also that of Bundy vs. Coke as authority, but this decision is also based upon the same proposition that in Vermont a married woman's common law disabilities had been removed.

It is true in this case that the court also referred to the case of Keyser vs. Hitz, then just decided, which case we will take up later.

In Bundy vs. Coke, the case went off upon a demurrer to the bill, the court holding the allegations of the bill sufficient.

In the case of Robinson vs. Turrentine, which arose in North Carolina, the court in a laborious opinion determined that the purchase of stock by a married woman was not a contract and that if she was the owner of the stock, she was liable, citing Keyser vs. Hitz.

NOTE:—This is the first case decided in a state where the laws of that state provided that a married woman could not make a contract and the decision is contrary to all authorities upon the proposition that the liability was not a matter of contract, and, therefore, cannot be recognized or quoted as an authority. Its very reasoning is destructive of its conclusions.

In the case of Keyser vs. Hitz, decided by the Supreme Court of the United States, Justice Harlan, held that the married woman was liable to such an assessment. It is to be borne in mind, however, that the Court was then passing upon the provisions of a national statute passed by the very same body which legislates for the District of Columbia, in which this case arose, and that

by the laws of the District of Columbia, the common law disabilities of married women had been removed and she could sue and be sued.

In this light the decision of the Court is in harmony with the established law, for the defendant in that case was not by the reason of the law of her domicile, or of the place of contract, incapacitated from entering into a contract; and the same laws allowing her to be sued for any liability arising out of such relations, the decision is in harmony with the cases where such conditions of law exist.

It is unfortunate, however, that certain portions of the opinion so read as apparently not to limit the decision to cases where such disabilities have been removed, and this has been erroneously followed by some circuit courts of the United States in the cases above referred to, and quoted as authority by Mr. Cook on Corporations, on page 486 of his work, to the effect that a married woman, irrespective of whether her common law disabilities have been removed or not, has by that decision been held liable for assessment *under the National Banking Act.*

In that opinion the Court says: "If she received transfers of the stock with her knowledge and consent signed the application for merger and received the dividends, then she was liable to be treated as a shareholder with such responsibility as the laws impose upon shareholders of national banks."

A careful reading of the whole opinion must, however, conclusively show that the Court had in mind the status of the defendant who was, by the laws of the District of Columbia, capable of entering into a contract and permitted to sue and be sued, and while the cases of Anderson vs. Line and of Witters vs. Sowles, as well as the Reciprocity Bank, reported in 22 New York, 915, are cited as authority, I am unhesitatingly of the opinion

that the Court did not intend that decision to become applicable to other than the case before it, or to those arising out of like conditions, and that it was not intended to establish a precedent by which a liability could be incurred and enforced against a person whom the law of the land declares incompetent to incur it.

In the New York case referred to it will be seen that, as in the District of Columbia, the common law disabilities had been removed and she was competent to contract and could sue and be sued.

To place any other construction upon this decision would be contrary to establish law and precedent and to the decision of the Supreme Court of the United States in the case of the Canal Bank vs. Partee, and to the opinion of the Court itself in the last clause there-

THE CIRCUIT COURT OF THE UNITED STATES HAS NO JURISDICTION OF THIS CASE.

It was apparent upon the face of the proceeding that this was a action at *law brought* against a *married woman* by the Receiver of a bank, *both* of whom were *domiciled in and citizens* of the *State of Florida* upon an alleged liability, the basis for which was a par value assessment upon the capital tock of the bank, made by the Comptroller of the Currency.
of, which winds up as follows:

"We are of the opinion that the coverture of the defendant did not prevent the plaintiff from recovering judgment for the amount of the assessment *if she was within the meaning of the statutes a shareholder in the bank, but,* as to what *property* may be *reached in* the *enforcement of the judgment,* it is *not before us and we express no opinion.*"

The husband of the married woman is and was but a nominal party defendant; the only object of the suit was to *enforce* an *alleged liability* growing *out of a contract*, the result of which could only have been a *personal money judgment* against *a married woman* which both *the law* and *procedure* of the *State of Florida prohibit;*

The United States Court was *bound* to have been *governed* by the *law and procedure in force in the State of Florida*, and that law had *determined* that the *Courts of the State* were *without jurisdicion to entertain or enforce such a proceeding* or to *render such a judgment*

This being an assessment by the comptroller of the par value of the stock, the action is properly at law.

Kennedy vs. Gibson, 8 Wallace, 198.
Godfrey vs. Terry, 97 U. S., 171.

The National Banking Act provides no remedy, no method of procedure for the enforcement or collection of these liabilities. Resort must, therefore, be had to the law of that jurisdiction in which the alleged liability is sought to be enforced, and the law of *the forum must* govern as *to the remedy*.

Section 914 of the Revised Statutes of the United States is in substance as follows:

That in all cases at law the Courts of the United States must follow the laws, proceedings, practice, forms and modes of procedure existing at the time in like cases in the courts of record of the state in which such United States Courts are held, and this extends to, and includes the evidence, sufficiency and scope of the pleadings, the form and effect of the verdict, and the lien and mode of the enforcemnet of the judgment.

Section 914 R. S. of United States.
Glenn vs. Sumner, 132 U. S., 152.

Robertson vs. Perkins, 129 U. S. 233.
Williams vs. Benedict, 8 How. U. S., 107.
Simonton on Fed. Courts, pages 152, 153, 156.

It has already been shown in this brief that by the laws in force in the State of Florida a married woman cannot enter into a contract so as to bind herself personally, and, therefore, can incur no personal liability, and as a natural sequence no suit based upon a contract, or any liability growing out of a contract, the result of which would be a personal judgment against her, can be maintained in any of the courts of that State.

Such being the case, the question was one of *jurisdiction* of the person of the defendant, Henrietta S. Christopher, which having been fully presented to the Court should have *been sustained, and the suit dismissed.*

Gould on Pleading, pages 231, et seq.
Canal Bank vs. Partee, 99 U. S., 325.

In this last case arising under the laws of the State of Mississippi, the Court declared that the coverture of the married woman *was jurisdictional,* and that the personal judgment rendered against her by the Court was absolutely void.

Domicile and citizenship of Henrietta S. Christopher, as well as the Bank, having been in the State of Florida, and the suit having been brought in that State, the Circuit Court of the United States was, therefore, bound by the laws of the State of Florida, in regard to the mode and manner of enforcing this liability, and if the laws of that State prohibited such an action against this defendant the Circuit Court of the United States was without jurisdiction in the premises and any judgment rendered by it was absolutely void.

The state courts are supreme in the construction of their own statutes and the United States Courts must follow the same.

Moores vs. The National Bank, 104 U. S. 625.
Tioga R. R. Co., vs. Blossburg, 20 Wal., 137.
Kibbie vs. Ditto, 93 U. S., 674.
Fairfield vs Gallatin, 100 U. S., 47.

The Supreme Court of the State of Florida has construed the law of that State as to the status of a married woman, and their liabilities under contract, determining the very question at issue by deciding that

No personal judgment at law or decree in equity can be rendered aginst a married woman in this State.

Prentiss vs. Paisley, 25 Florida, 927.
McQuaid vs. Fortune, 24 Florida, 509.
Dolmer vs. Snow, 16 Florida, 86.(
Adams vs. Frye, 29 Florida, 318.
Goss vs. Furman, 21 Fla., 406.
Garvin vs. Watkins, 29 Florida, 151.

As this is not a suit in equity seeking to charge Mrs. Christopher's separate estate, the amendment to the articles of the Bank, not being executed according to law by being separately acknowledged and having her husband join therein, and that part of the stipulation shown as paragraph 4, of the testimony as to her signing be rendered against a married woman in this State.
mony and should have been stricken out on the defendant's motion. It can in no wise affect this case, however.

Printed record, page 21.

The findings of the Court that the defendant, Henrietta S. Christopher, was a *married woman* entitled *her* to *judgment*, under the *laws of Florida* and *the decisions of its Supreme Court thereon.*

Printed record, page 23.

The judgment of the Court is *a personal judgment* against the defendant, *Henrietta S. Christopher for money.*

Printed record, page 13-14.

The affirmance of the judgment of the Circuit Court of the United States by Circuit Court of Appeals of the Fifth Circuit, was error; their judgments should have been one of reversal of the lower Court on the ground ground that the Courts of the States of Florida would have had no jurisdiction to render such a judgment, and the Courts of the United States sitting in that State were bound by the laws and procedure of that State in that regard, that the Circuit Court of the United States which tried this case would also have been without jurisdiction, and that such a judgment was void as prohibited by the constitution and laws of the State of Florida;

We respectfully submit that it clearly appears upon the face of the whole proceeding that this judgment was a nullity, that the Court had no jurisdiction to render it, and that the Circuit Court of the United States committed error in rendering the same, and the Circuit Court of Appeals in affirming the same, and that the said judgments and proceeding should be reversed and the cause remanded with instructions that judgment be rendered for the plaintiff in error, defendants in the Court below.

N. N. Ducktman

Attorney for Plaintiff in Error.

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FILED
JAN 15 1906

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 211.

HENRIETTA S. CHRISTOPHER ET AL., PLAINTIFFS IN ERROR,

vs.

JOSEPH W. NORVELL, RECEIVER, &c.

BRIEF FOR DEFENDANT IN ERROR.

DUNCAN UPSHAW FLETCHER,
Attorney for Defendant in Error.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C.

(19,679.)

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BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

The defendant in error, Joseph W. Norvell, as receiver of the First National Bank of Florida, brought this action at law in the circuit court of the United States for the southern district of Florida against the plaintiffs in error, defendants below, Henrietta S. Christopher and John G. Christopher, her husband. The case was tried in the lower court, without a jury, and by the court on written stipulation (page 10 of record). The facts are given on pages 18 to 23 of record, and briefly they are: Plaintiff in error Henrietta S. Christopher became the owner of fifteen (15) shares of stock in the First National Bank of Florida, November 15, 1887, by will of her

father, and her attorney procured the transfer of the stock to her and received certificate for the shares November 17, 1887, and delivered the same to her, and she still holds the same; that she drew dividends thereon as long as the bank paid dividends, to and including February, 1896; that the books of the bank show her to be a stockholder and that dividends were paid to her direct, the same as any other stockholder; that on February 23, 1894, she joined the other stockholders in a written application for "amendment to the articles of association" of said bank; that on March 14, 1903, the bank failed, and defendant in error was appointed its receiver, and on April 1, 1903, the Comptroller of the Currency made and ordered an assessment on all the stockholders, in pursuance of sections 5151 and 5134, Revised Statutes, and notice thereof was sent to said Henrietta S. Christopher and she refused to pay, and this suit was brought against her, and her husband, John G. Christopher, was joined as a defendant by the receiver of the bank.

The declaration shows the said Henrietta S. Christopher to be the wife of John G. Christopher. Demurrer was filed to it on that ground. The demurrer was overruled. Defendants pleaded first never indebted, then setting up the coverture of Mrs. Christopher, and by the fourth plea denying that Mrs. Christopher was ever a shareholder. Plaintiff demurred to all the pleas except the first. This demurrer was sustained, except as to the fourth plea. Plaintiff then joined issue on the first and fourth pleas and proceeded to trial. The demurrer to the pleas raised the same question as the demurrer to the declaration, to wit, whether or not the coverture of Mrs. Christopher relieved or exempted her from all liability in an action of this kind to enforce the assessment of the Comptroller. The fourth plea denied that Mrs. Christopher ever was a shareholder in the bank, "she being a married woman." It apparently gave as a reason for the averment that she was a married woman, and hence it was demurred to, but the circuit court held the averment presented a material, issuable

fact, and overruled the demurrer, and so issue was joined on that plea. A jury was waived, and Judge Locke found and rendered judgment for the plaintiff (p. 11). This judgment was confirmed by the circuit court of appeals (p. 31). Defendants assign error.

To argue each assignment of error separately would necessitate repetition. The sole question presented by the record is as to the rights and liabilities of a married woman who owns stock in a national bank in Florida which fails.

All of the assignments of error may be condensed and the whole discussion may be limited to the following:

Plaintiffs in error, defendants below, contend that a married woman in Florida cannot be a shareholder in a national bank, and she cannot be sued at law, and no judgment at law can be recovered against her, and that, although shares of stock in a national bank may be given to her and certificates may be issued to her, and she receive and accept the same, and receive and accept dividends paid thereon, and join in a petition with other stockholders for an amendment of the charter of the bank, yet, when that bank fails and the Comptroller makes an assessment against all the stockholders, including her, which she refuses to pay, she can rely upon her coverture, deny liability, because under the laws of Florida she cannot contract as if she were sole, and insist that she cannot be sued at law, and that no judgment at law can be recovered and entered against her, and no judgment at law can be enforced against her or her property in Florida.

The foregoing presents the whole question involved in all the assignments of error and brought up by this record.

ARGUMENT.

I.

WE CONTEND THAT THE LIABILITY OF A MARRIED WOMAN TO AN ASSESSMENT BY THE COMPTROLLER IN SUCH CASE IS THE SAME IN FLORIDA AS IN EVERY OTHER STATE, INCLUDING THE DISTRICT OF COLUMBIA.

We believe her liability is to be determined by the national banking laws of Congress and not by local or State laws. The Constitution of the United States vests Congress with the power, and Congress has undertaken to deal with the whole subject of national banks, and all shareholders are treated alike, having the same rights and the same liabilities. No distinction is made of any character. If any one is capable of owning such property as stock in a national bank, such person, white or black, male or female, married or single, must stand precisely on the same footing. It is not insisted and cannot be shown that a married woman is incapable of owning such property under the constitution and laws of Florida. If there is any kind of property a married woman may not have, acquire by gift, or purchase and own in Florida, it would be very new and interesting information to have it pointed out. If there is any species of property a married woman cannot acquire and own in Florida, it has never been discovered, so far as we are advised. There is, sometime, difficulty met in getting property away from her, but we have yet to learn of any trouble about giving it to her or vesting her with absolute ownership of any and every kind of property, and without the intervention of a trustee or other fiduciary. If a married woman may become the possessor and owner of shares in a national bank, then she may become a shareholder. If she becomes a shareholder, the acts of Congress make her liable as such. Otherwise we have the pecul-

iar spectacle, which shocks the conscience, of a shareholder in a national bank who is entitled to all the benefits, dividends, rights and privileges of the other shareholders, but can disclaim and prevent the enforcement of the obligations and liabilities which rest on the other shareholders, not only as against the bank, but as against the creditors as well. If this be sound, we may expect a bargain day rush for stock in national banks by married women in Florida. We may also expect, when and if such banks become insolvent, to find that the shares are practically all held by married women, and if plaintiffs in error succeed in their contention, we will also find that depositors and other creditors of such associations will find that one security they relied on, to wit, shareholders' liability to the amount of the capital of the bank, has vanished into thin air. Depositors cannot, surely, be expected to watch every transfer of stock on the books of the bank in order to keep posted about whether the stock is held "solely for revenue" to the owners, without even "incidental protection" to creditors. Depositors have a right to rely upon the statute and the provisions made for their security.

II.

WITHOUT ADMITTING THAT THE CONSTITUTION AND LAWS OF FLORIDA AFFECT THE QUESTION, WE CLAIM THAT A MARRIED WOMAN IS UNDER NO DISABILITY, SO FAR AS HER RIGHT TO OWN NATIONAL BANK STOCK IS CONCERNED, IN SAID STATE.

The Constitution expressly provides that "all property, real and personal, of a wife, owned by her before marriage, or lawfully acquired afterwards by gift, devise, bequest, descent or purchase, shall be her separate property, and the same shall not be liable for the debts of her husband without her consent, given by some instrument in writing, executed according to the law respecting conveyances by married women" (art. XI, sec. 1).

Under section 2 of this article a married woman's separate property is made chargeable in equity with the price of any property purchased by her.

Hall *vs.* Meinhard Bros. & Co., 34 Fla., 607.

And in reference to this provision, the supreme court of Florida says: "The manifest purpose of the convention was to provide for and regulate in the original law not only the right of married women to acquire and hold property, but," etc. * * * and "the second section regulates the right to subject, in equity, a married woman's separate real and personal property to the payments of debts or obligations contracted by her in reference thereto."

Hall *vs.* Einstein, 34 Fla., 602.

Any gift of personalty to a married woman is presumed to be her separate statutory property.

Alston *vs.* Rawles, 13 Fla., 117.

"A married woman may dispose of her property, both real and personal, by last will and testament, in the same manner as if she were not married."

Sec. 1793, R. S. Fla.

She can institute claim proceedings to recover her property.

Sec. 1197, R. S.

She can replevin it by proceedings at law.

See secs. 2069, 2070, R. S. Fla.

She is capable of acquiring, owning and holding real and personal property of every description.

She is not prohibited by any law of Florida from being a shareholder in a national bank or from owning stock in a national bank.

III.

IF THE DEFENDANT HENRIETTA S. CHRISTOPHER IS NOT INCAPACITATED FROM BECOMING THE OWNER OF THE STOCK, IF THE LAWS OF FLORIDA PERMIT A MARRIED WOMAN TO OWN SHARES IN A NATIONAL BANK, SHE BECAME A SHAREHOLDER, AND IS SUCH TODAY, AND AS SUCH IS LIABLE TO ASSESSMENT UNDER THE NATIONAL BANKING LAWS.

It must be conceded that a married woman may own and hold stock in a national bank in Florida, but counsel for plaintiff in error insists that the only remedy against her is by bill in equity under the constitution and laws of Florida. Counsel overlooks the principle that if plaintiff in error can own and hold such stock, her liability and the means of enforcing it *are controlled by the laws of the United States and not by those of the State.* She became liable as a shareholder under the laws of the United States, and the remedy of the receiver is an action at law as in the case of any other shareholder.

Keyser *vs.* Hitz, 133 U. S., 138–150.
In re First National Bank of St. Albans, 49 Fed., 120.
Bandy *vs.* Cocke, 128 U. S., 138.
Zane on Banks and Banking, p. 77 and p. 674.
Sec. 5151, R. S. U. S.
See also Lamoser *vs.* Keeler, 123 U. S., 376.

The remedy is at law.
Kennedy *vs.* Gibson, 8 Wall., 498.

We may mention here in passing that the United States court has jurisdiction herein without regard to the amount involved.
Brown *vs.* Smith, 88 Fed., 565.

Also, though no assignment raises the question, it may be referred to in brief, and we note that it is customary to join

husband and wife in such action, but if this is considered improper, the court can order the names of misjoined defendants struck out.

Sec. 936, R. S. Florida.

The supreme court of Florida held in Lignoski *vs.* Bruce, 8 Fla., 269, that the husband must be coplaintiff in a suit at law for the recovery of the wife's separate property.

The common-law rule is the husband must be joined.

29 Florida, 927.

The same case holds a married woman may be sued at law for her tort. If the judgment should be entered against the wife alone, it can be so modified without being reversed.

Mrs. Christopher is a shareholder and liable to the assessment and to be sued therefor at law.

Revised Statutes of United States provides, section 5139: "The capital stock of each association shall be divided into shares of one hundred dollars each, and be deemed personal property, and transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of association. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all the rights and liabilities of the prior holder of such shares; and no change shall be made in the articles of association by which the rights, remedies or security of the existing creditors of the association shall be impaired,". * * * and

Sec. 5151. "The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares," etc.

The Comptroller of the Currency has constitutionally the power to appoint a receiver for a defaulting or insolvent national bank, and to call for a ratable assessment upon the stockholders, without a previous judicial ascertainment of

the necessity for the appointment of the receiver and of the existence of the liabilities of the bank.

Bushnell *vs.* Leland, 164 U. S., 684, 685.

This statutory liability is not in favor of the bank, but of its creditors.

Wickham *vs.* Hull (Iowa), 71 N. W. Rep., 352–353.

Irons *vs.* Manufacturers' Bank, 21 Fed. Rep., 197.

The general rule is the owner of the stock, in whose name it stands on the books, is and remains liable for assessment.

Even if a married woman should subscribe for stock and only pay in a part of the par value, she might be assessed with other stockholders and be obliged to pay, because *her obligation is created by statute of the United States.* The element of power to contract might enter into such a case, perhaps, but in the case at bar the stock was bequeathed to Mrs. Christopher and transferred to her on the books, and she "received and accepted" it, as she avers in her plea. Her obligation, in this instance particularly, is *created by the acts of Congress and not by any law of Florida.*

McDonald *vs.* Thompson, 184 U. S., 71, 73, 74.

Aldrich *vs.* Campbell, 97 Fed., 663.

A married woman is liable to assessment whether her stock was bought by her or bequeathed to her.

Witters *vs.* Sowles, 32 Fed., 767; 35 Fed., 640; 38 Fed., 700; 39 Fed., 403.

Kerr *vs.* Urie (Ind.), 37 Atl. Rep., 789.

Keyser *vs.* Hitz, 133 U. S., 139.

The national banking laws are constitutional, and the State can exercise no control over national banks nor in anywise affect their operation, except in so far as Congress may see proper to permit.

The State statute imposing a penalty for usury does not affect a national bank located in the State.

Farmers' and Mechanics' National Bank *vs.* Dearing, 91 U. S., 29.

Whenever the will of the nation intervenes exclusively in this class of cases the authority of the State retires and lies in abeyance until a proper occasion for its exercise shall recur.

Gilman *vs.* Philadelphia, 3 Wall., 713.

Ex parte McNiel, 13 Wall., 240.

The judgment of the Comptroller is conclusive as to the necessity for and amount of the assessment.

Zane on Banking, p. 112.

Casey *vs.* Galli, 94 U. S., 673.

One who allows himself represented on the books of the bank as owner of stock will not be heard to dispute liability.

Zane, p. 82.

See 99 U. S., 628.

The obligation of stockholder to pay assessment is created by statute.

McDonald *vs.* Thompson, 184 U. S., 71.

Vol. 3, G. & T. Notes, pp. 695 and 701.

Secs. 5151 and 5234, R. S.

The case of Easton *vs.* Iowa, 188 U. S., 220, is in point, to the effect: "National banks are instrumentalities of the Federal Government, created for a public purpose, and as such, necessarily subject to the paramount authority of the United States."

Again says the court, p. 238: "Our conslusions, upon principle and authority, are that Congress, having power to create a system of national banks, is the judge as to the extent of the powers which should be conferred upon such banks, and has the sole power to regulate and control the exercise of their operations."

Again: "It is not competent for State legislatures to interfere, whether with hostile or friendly intentions, with national banks," etc.

So a State is without lawful power to make special laws of a criminal or civil nature "applicable to banks organized and operating under the laws of the United States."

Our highest court says this matter is controlled by the national banking act, and under that Mrs. Christopher is liable for this assessment, and, being liable, she can be sued for it and a judgment can be recovered against her and enforced as any other judgment against any other person.

The findings of fact and law, p. 11 of record, by the lower court (a jury being waived) was eminently correct and, in truth, could not have been otherwise.

It is settled by the Supreme Court of the United States, in the case of Keyser *vs.* Hitz (133 U. S., 138), that a married woman, notwithstanding her disability under the common law, if she is authorized to own national bank stock, is liable to a judgment for an assessment levied upon her stock. It is also held that while a married woman who does not know that stock has been conveyed or assigned to her would not be liable to an assessment, yet, where she knows of the assignment and accepts it, she is liable. It is familiar law that the actual owner of the stock is liable for the assessment, whether the transfer has been made upon the books of the bank or not. It follows, therefore, that unless the laws of Florida absolutely prohibit married women from owning national bank stock, a judgment can be entered against Mrs. Christopher on the assessment. It appears by the pleas, as well as the evidence, that this stock was willed to her and that she "has received and accepted it." It cannot be demonstrated that any law in Florida prohibits a married woman from owning national bank stock.

The coverture of Mrs. Christopher does not prevent the receiver from recovering judgment against her, and her liabili-

ties depend on the statutes of the United States, and so does the right of the receiver to sue her at law and recover.

Keyser *vs.* Hitz, 133 U. S., 138 and 150.
Witters *vs.* Sowles, 32 Fed. R., 130.
Anderson *vs.* Line, 14 Fed. R., 405.
Witters *vs.* Sowles, 35 Fed. R., 640.
Re 1st National Bank St. Albans, 49 Fed. R., 120.
Kerr *vs.* Uric, 38 L. R. A., 121.
Boone on the Law of Banking, secs. 316, 317, and note.

The case of Robinson *vs.* Turrentine (59 F. R., 554, 558) furnishes a full discussion of the subject and authorities and is directly in point.

See also *In re* First National Bank of St. Albans, 49 F. R., 120, and Bundy *vs.* Cocke, 128 U. S., 185; Zane on Banking, 77, 674; sec. 5151, R. S. U. S.; Hobart *vs.* Johnson, 8 F. R., 493; 5 Enc. Law and Procedure, 576, 577, and 578.

IV.

A MARRIED WOMAN MAY OWN STOCK IN A NATIONAL BANK, AND SHE THEREBY BECOMES A SHAREHOLDER AND LIABLE TO ASSESSMENT BY THE COMPTROLLER, AND TO BE SUED THEREFOR AT LAW IN THE UNITED STATES COURT IN FLORIDA.

We submit that counsel for plaintiff in error has failed to cite a single case to the contrary of this proposition. All the cases hold the defense urged in this case and set up by pleas of defendants below, to which demurrer was sustained, is not a good defense.

All the text-writers sustain the proposition above announced by defendant in error, plaintiff below.

No exceptions or qualifications are asserted by the authorities such as counsel for plaintiffs in error contend for.

Just what is held in Keyser *vs.* Hitz., 133 U. S., 138, is the recognized law wherever there is no prohibition against a

married woman owning and holding stock in a national bank.

If this law did not apply to common-law States, it would seem some case could be found so holding. On the contrary, it is conceded the statute of North Carolina comes nearer prohibiting such ownership than any law in Florida, yet we have the case of Robinson *vs.* Turrentine, 59 F. R., 554, directly in point here, and I refer to that case for the argument completely answering counsel in this case.

I shall not venture to follow the fancied discriminations and ingenious reasoning of counsel, as he endeavors to show the *unsoundness* of the law. The law is settled. I simply ask the court to refer to the following authorities, showing we have not overstated the situation as to the decisions and authorities:

Keyser *vs.* Hitz., 133 U. S., 138.
Witters *vs.* Sowles, 38 F. R., 700.
Witters *vs.* Sowles, ex'r, *et al.*, 32 F. R., 130.
Witters *vs.* Sowles and Wife, 32 F. R., 767.
Witters *vs.* Sowles and Wife, 35 F. R., 640.
Robinson *vs.* Turrentine, 59 F. R., 554.
Anderson *vs.* Line, 14 F. R., 405.
In re First National Bank of St. Albans, 49 F. R.,120.
Price, rec., *vs.* Abbott, 17 F. R., 506.
Yardley *vs.* Dickson, 47 F. R., 835.
Brown *vs.* Smith, 88 F. R., 565.
Bundy, rec., *vs.* Cocke, 128 U. S., 185.
Kennedy *vs.* Gibson, 8 Wall., 498.
McCullough *vs.* State of Md., 4 Wheat., 316; 19 Blatch., 359.

Text-writers:

Smith on Receivers, 441, note 3.
Ib., pp. 100 and 101, Appendix.
Boone on the Law of Banking, secs. 316 and 317 and note, and 364 and note.
Ib. (5th ed.), sec. 250.
Zane on Banks and Banking, pp. 77 and 674.
Cook on Corporations, sec. 250, vol. 1, p. 544.

Encyclopedias:

5 Cyclopedia of Law and Procedure, pp. 576, 577, and 578, under head "Banks and Banking."

21 Am. and Eng. Ency. Law, p. 341 and note 4, 2d ed. (and authorities there cited).

1, G. & T. Notes, p. 933 and authorities.

Counsel concedes, practically, in his argument that a married woman in Florida may own and hold stock in a national bank. He undertakes to show that this does not make her a shareholder. No such nice distinction is drawn by the Supreme Court in Keyser *vs.* Hitz, when the court says expressly, "if she is not incapacitated from becoming the owner of stock," she becomes a shareholder and is liable in an action of this kind. The only condition of liability which the Supreme Court recognizes is that of her capacity to own and hold stock at all. If she can do that, she is a shareholder within the meaning of the statute, and is liable under the statute, and may be sued at law just precisely as any other shareholder. A married woman, under the laws of Florida, is permitted to own stock in a national bank—is permitted to become a shareholder, therefore—and she is, therefore, liable to assessment as a shareholder, and the remedy is the same against her as against other shareholders. Her liability is the same, and the remedy or method of procedure is the same.

True, infants and idiots may own stock, and they become shareholders when they do, but they, together with executors and administrators, or rather their guardian, committee, trustee and the like, come within sec. 5152, R. S. No law in Florida makes it necessary for a married woman to have a trustee, guardian or committee. On the contrary, she is especially vested with her statutory property. She may have an equitable estate in property, and may have a trustee in that connection, but property of the kind in question here is her separate statutory property, and there can be no interven-

tion of a trustee or any other agency or representative. If a court of equity, in a proper case, should seize it, that would be accomplished through a receiver. She can hold and own the stock, and that, the Supreme Court says, makes her a shareholder, and if she is a shareholder, she is liable for this assessment, and the remedy is action at law—just as it would be against any shareholder—and this by virtue of the act of Congress. Counsel says the State statute of limitations could be pleaded by a shareholder. That may be, but I apprehend if the act of Congress provided for limitations as to such action that would control, and not the State law, as to such limitation.

Counsel's argument leads to this: A married woman may own such stock, she may receive dividends on it, she may exercise the functions and prerogatives of a shareholder, in Florida, but, because she is under disability as to contracts, she cannot be held liable as other shareholders, notwithstanding the act of Congress to that effect, and she can't be sued at law at all; therefore, if she is liable, the liability cannot be enforced, unless it be by suit in equity, and in such a case the receiver could only look to the particular property, to wit, the bank stock, and subject it to the payment of that liability. This, of course, is worse than worthless. Consequently, so long as the bank pays dividends, she can receive them, but when that other contingency arises, as provided for by act of Congress, she can fall back upon her disabilities to contract and escape the consequence of her ownership of that property, the benefits of which she has enjoyed. The courts do not agree to the soundness of this argument.

When the assessment is for the full amount provided by statute, the remedy is at law.

8 Wall., 498.

Even if we proceeded in equity here, we could only look to the stock itself, if we concede that we are controlled by the constitution and laws of Florida as to procedure.

But this whole subject is regulated by Congress. The liability arises under the act of Congress. The liability being fixed, the method of enforcing it against one shareholder being the same as to all others, no exceptions being recognized, we must proceed in that way.

4 Wheat., 316.

So all the cases hold, so all the authorities lay it down. There is absolute unanimity of authority on these particular questions. We need not indulge in suppositions as to what would be held in the case of an infant or lunatic. We have the case of a married woman holding stock in a national bank, the bank failing, Comptroller ordering full assessment, suit at law against her to recover. Her coverture is no defense. She can be a shareholder, and is, because she can and does own the stock. She is liable as such, no matter what the laws of Florida may be.

The pleas admit defendant received and accepted the stock. They do not deny that she received dividends. The evidence shows that she did, and that she had the stock transferred on the books of the bank to her, and that she joined other stockholders in an application to amend the bank's charter. The case of Keyser *vs.* Hitz alone seems conclusive of the questions here.

The new and latest edition of Cook on Corporations, section 250, vol. 1, pp. 540–544, gives the law: "A person buying stock in a national bank, in the names of his minor children, became liable to assessment as a stockholder * * * the father is liable, even though the child becomes of age after the assessment is made" (p. 541). "A married woman is liable on national bank stock, even though she purchased the stock without the consent of her husband, and the statutes of the State provided that a married woman should not be liable on a contract without such written consent" (p. 544).

See note E, p. 543.

The note 2, p. 544, gives the case (in addition to others) of Kerr *vs.* Urie, 86 Md., 72 (1897), holding that "a married woman living in Maryland and being a stockholder in a national bank in Texas, is liable on the statutory liability, irrespective of the statutes of Texas." This author gives no exceptions to the rule.

We respectfully submit that there is no merit in the assignments of error.

The constitution and laws of Florida do not control the question of the liability of any shareholder of a national bank, male or female, married or unmarried, or the manner of enforcing such liability. The acts of Congress alone determine the matter.

Very recently the subject has been dealt with in Van Reed *vs.* People's National Bank, 25 Sup. Ct. Rep., 775 (May 29, 1905), wherein this court affirms its previous decision in Pacific Nat. Bank *vs.* Mixter, 124 U. S., 721, Mr. Justice Day saying in part:

> "The right of Congress to determine to what extent a State court shall be permitted to entertain actions against national banks, and how far these institutions shall be subject to State control, is undeniable. National banks are quasi-public institutions, and for the purpose for which they are instituted are national in their character and within constitutional limits are subject to the control of Congress, and are not to be interfered with by State legislative or judicial action, except so far as the law-making power of the Government may permit."

There was no error in affirming the judgment of the circuit court.

DUNCAN UPSHAW FLETCHER,
Attorney for Defendant in Error.

Supreme Court of the United States.

No. 211.—October Term, 1905.

Henrietta S. Christopher and John G. Christopher, Plaintiffs in Error, vs. Joseph W. Norvell, Receiver of the First National Bank of Florida.	In error to the United States Circuit Court of Appeals for the Fifth Circuit.

[April 2d 1906.]

Mr. Justice Harlan delivered the opinion of the Court.

By the Revised Statutes of the United States it is provided that the shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares; that persons holding stock as executors, administrators, guardians or trustees, shall not be personally subject to any liabilities as stockholders, the estates and funds in their hands being liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust-funds would be, if living and competent to act and hold the stock in his own name; and, that a receiver of a national bank may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders. *R. S.* §§ 5151, 5152, 5234.

Proceeding under these statutes the Receiver of the First National Bank of Florida brought this action against Henrietta S. Christopher (her husband John G. Christopher being joined as co-defendant) to recover the amount due from her as a shareholder of that bank under an assessment made by the Comptroller of the Currency against the stockholders of that bank in order to pay its debts.

The case made by the record is this: At the time of the failure of the bank, on March 14th 1903, fifteen shares of its stock stood in the name of Mrs. Christopher. The stock was bequeathed to her by her father in 1886, and his executors caused it to be transferred to her name on the books of the bank. This was done without any request from or direction by her. Although not aware of such transfer until the stock had been issued and delivered to her in November 1887, since that date she has held the certificate for the fifteen shares. It is shown that in 1894 she joined with

other shareholders in securing an amendment of the bank's articles of association, which extended the corporate existence of the bank until the close of business on May 26th 1914. It further appears that she received several semi-annual dividends, from three to five per cent, on her stock from November 1887 up to and including February 1st 1896, at which time the last dividend on the capital stock of the bank was declared and paid to stockholders. The dividends were paid by checks made payable to her order and personally indorsed by her. After the transfer of the stock Mrs. Christopher's name appeared on the registry of shareholders as the owner of the fifteen shares of stock, and the books kept by the bank showed the amount of dividends paid to her from time to time on tho seshares.

A personal judgment was rendered in the Circuit Court against Mrs. Christopher for the amount due on the assessment made by the Comptroller. The judgment was affirmed by the Circuit Court of Appeals which held that nothing in the law of Florida disabled married women from owning in their own right stock in national banking associations, and from incurring the liabilities resulting therefrom. 134 *Fed. Rep.* 842.

That the Comptroller had authority to make the assessment against stockholders, and that such assessment is conclusive as to the amount to be collected, cannot be questioned. *Kennedy* v. *Gibson*, 8 *Wall.* 498; *Casey* v. *Galli*, 94 *U. S.* 681; *Keyser* v. *Hitz*, 133 *U. S.* 138; *Bushnell* v. *Leland*, 164 *U. S.* 684–5.

Did the coverture of Mrs. Christopher at the time her name was placed on the books of the bank as a shareholder as well as when she received the certificate of stock, protect her against a *personal* judgment at law for the amount due under the assessment made by the Comptroller of the Currency? That is the controlling question in the case.

This question is, we think, substantially answered by the judgment of this court in *Keyser* v. *Hitz*, 133 *U. S.* 138, 150–2. That was an action at law against Mrs. Hitz, a married woman, who owned shares of stock in a savings bank which was converted into a national bank. The action against her was based on an assessment made by the Comptroller of the Currency. One of the contentions in the case was that the coverture of the defendant at the time she acquired the stock, as well as when the bank failed, protected her against an assessment under the act of Congress. The transaction occurred in the District of Columbia, where the bank was located. It was not contended that the defendant was incapacitated by the laws of the District from becoming the owner of bank stock, and hence the court did not consider what would have been the result, if the local statutes had prohibited married women from becoming the owners of bank stock. Upon that basis, the court said: "Assuming then, that she was not incapacitated from becoming the owner of stock in a bank, and that she was a shareholder in the savings bank, she became, upon the conversion of that bank into a

national bank, a shareholder in the latter. *Rev. Stat.* § 5154. In that event she became, *by force of the statute*, individually responsible to the amount of her stock, at the par value thereof, for the contracts, debts and engagements of the national bank equally and ratably with other shareholders. Section 5151, which imposes such individual responsibility upon the shareholders of national banks, makes no exception in favor of married women. The only persons holding shares of national bank stock, whom the statute exempts from this personal responsibility, are executors, administrators, guardians, or trustees. § 5152. It is not for the courts, by mere construction, to recognize an exemption which Congress has not given." Again: "We are of the opinion that the coverture of the defendant did not prevent the plaintiff from recovering a judgment against her for the amount of the assessment in question, if she was, *within the meaning of the statute*, a shareholder in the bank at the time of its suspension. But the question as to what property may be reached in the enforcement of such judgment is not before us, and we express no opinion upon it."

The present defendant insists that she was incapacitated under the Constitution of Florida and under the decisions of the Supreme Court of that State from becoming the owner of the stock bequeathed to her by her father. In support of this proposition we are referred to the following provision in a statute of Florida enacted November 6th 1829: "The common and statute laws of England, which are of a general and not of a local nature, with the exception hereinafter mentioned, down to the 4th day of July 1776 be and the same are hereby declared to be in force in this State, provided the same be not inconsistent with the Constitution and laws of the United States and the acts of the legislature of this State." Also, to the following provisions of the Constitution of Florida: "All property, real and personal, of a wife owned by her before marriage or lawfully acquired afterward by gift, devise, bequest, descent or purchase, shall be her separate property, and the same shall not be liable for the debts of her husband without her consent, given by some instrument in writing, executed according to the laws respecting conveyances by married women." *Art.* 11, § 1; "A married woman's real or personal property may be charged in equity and sold or the uses, rents and profits thereof sequestrated for the purchase money thereof, or for money or thing due upon any agreement made by her in writing for the benefit of her separate property, or for the price of any property purchased by her, or for labor and material used with her knowledge or assent in the construction of buildings, or repairs, or improvements upon her property, or for agriculture or other labor bestowed thereon with her knowledge or consent." *Art.* 11, § 2.

The argument is that at common law a married woman could not make, or bind herself personally by, a contract, and was incapable, by the law of Florida, as at common law, of entering into a contract, at least one

one that would subject her to personal liability; that the relation of a shareholder to a national banking association was of a contractual character; and consequently, to render a personal judgment against the defendant Mrs. Christopher was, in effect, to hold her personally bound by a contract which under the laws of Florida she was incapable of making.

The vice in this argument is in the assumption that the liability of Mrs. Christopher as a shareholder arises *wholly* out of *contract* between herself and the bank or its creditors; whereas, upon becoming a shareholder, she made, strictly, no direct contract with any one, and became, as was held in *Keyser* v. *Hitz*, above cited, *by force of the statute* individually responsible to the amount of her stock, for the contracts, debts and engagements of the bank equally and ratably with other shareholders. Such statutory liability was created for the protection of creditors, and in order to strengthen the bank in the confidence of the public. The bank, although its shares of stock were private property, was an instrumentality of the General Government in the conduct of its affairs. *Farmers' &c. Nat. Bank* v. *Dearing*, 91 *U. S.* 29, 33. In *Davis* v. *Elmira Savings Bank*, 161 *U. S.* 275, 283, the court said that "national banks are instrumentalities of the Federal Government, created for public purposes, and as such are necessarily subject to the paramount authority of the United States." This principle was reaffirmed in *Easton* v. *Iowa*, 168 *U. S.* 220, 237. See, also, *Pacific Nat. Bank* v. *Mixter*, 124 *U. S.* 721.

In *McClaine* v. *Rankin*, 197 *U. S.* 154, 161–3, which was an action against a shareholder of a national bank to recover the amount due on an assessment made by the Comptroller of the Currency, and in which the question was as to the nature of the cause of action, this court said: "Some statutes imposing individual liability are merely in affirmation of the common law, while others impose an individual liability other than that at common law. If § 5151 had provided that subscribing to stock or taking shares of stock amounted to a promise directly to every creditor, then that liability would have been a liability by contract. But the words of § 5151 do not mean that the stockholder promises the creditor as surety for the debts of the corporation, but merely impose a liability on him as secondary to those debts, which debts remain distinct, and to which the stockholder is not a party. The liability is a consequence of the breach by the corporation of *its* contract to pay, and is collateral and *statutory*. . . But here the right to sue did not obtain until the Comptroller of the Currency had acted, and his order *was the basis of the suit*. The statute of limitations did not commence to run until assessment made, and then it ran as against an action *to enforce the statutory liability*, and not an action for breach of contract."

In *Robinson* v. *Turrentine*, 59 *Fed. Rep.* 554, 555, it was held that the liability of a married woman for an assessment upon national bank

stock did not grow out of contract, although it was one of a class of liabilities which may be enforced by an action in form *ex contractu*. In the same case it was said: "By the banking laws of the United States all the shares in the stock of national banks are liable to an assessment like the one levied on the stock of plaintiff's bank. To hold that a State law, were there such a law, could except certain shares from the liability would enable States to defeat the policy of the Federal Government in establishing the national banking system. That the Congress has power to establish and legislate for such banks has not, since 1819, been an open question. *McCulloch* v. *Maryland*, 4 *Wheat.* 316. If a purchase of stocks in a national bank by a married woman without the written consent of her husband gives her the ownership of such stock, judgment must be given against the *feme* defendant. If she owned the stock at the failure of the bank, she is liable to the assessment; if she did not, she is not liable. While the Federal Government exclusively controls the question of the liabilities of stockholders in national banks, it is not doubted but that a State has power to say that, for reasons seeming good to its legislature, and not in conflict with organic law, a particular class of persons shall not be permitted to own particular classes of property."

In *Kerr* v. *Urie*, 86 *Md.* 72, 77, it was held that a married woman residing in Maryland was capable of holding shares of stock in a national bank located in Texas, and as such shareholder was subject to the personal liability imposed by the national banking laws, without regard to the question whether she was entitled under the laws of the State where the bank was located to become the owner of such stock. The court said: "We conclude, therefore, that by virtue of the transfer in Maryland, and without regard to the laws of Texas, Mrs. Urie became the equitable and real holder of the stock in question; and if this be so, no question as to her powers of disposition, or as to whether she is or is not capable under the laws of Texas to make contracts, can arise in this case, for the liability of the stockholder arises not under any law of Texas, which it is contended has not been proven in this case, but under the act of Congress; and the contracts which it is claimed she is liable on are not her contracts, but the contracts of the bank. *Witters* v. *Sowles*, 35 *Fed. Rep.* 641; *Section* 5152, *U. S. Rev. Stat.* The right to be a stockholder is given to her by the law of the State where she resides, and her rights *and liabilities* as such are provided *by the acts of Congress.*"

Recurring to the provisions in the statute and Constitution of Florida, it is clear that they do not incapacitate a married woman in that State from becoming the owner by bequest or otherwise of stock in a national banking association. On the contrary, it seems that all property, real and personal, owned by a married woman before marriage, or lawfully acquired afterward by gift, devise, bequest, descent or purchase, is her separate property.

Nevertheless, it is said, by the settled course of decisions in that State a married woman cannot bind herself personally by contract at law or in equity, or by becoming a partner, or by making a promissory note. *Dollner* v. *Jones*, 16 *Fla.* 86; *Hodges* v. *Price*, 18 *Fla.* 342; *Goss* v. *Turner*, 21 *Fla.* 406; *De Graum* v. *Jones*, 23 *Fla.* 83, and *Randall* v. *Bogardis*, 23 *Fla.* 264. But those cases are not in point here; for, in each of them, the personal liability attempted to be imposed upon the married woman arose *entirely* out of contract, express or implied, on her part, and not by force of any statute. The argument made in this case in behalf of Mrs. Christopher assumes that the liability sought to be fastened upon her arises wholly out of contract; that is, out of an implied obligation, at the time her name was placed on the registry of shares and she received dividends, to contribute to the extent of the value of such shares to the payment of the debts of the bank. But that implied obligation, although contractual in its nature, could not, standing alone, be made the basis of this action. Without the statute she could not be made liable individually for the debts of the bank at all. No implied obligation to contribute to the payment of such debts could arise from the single fact that she became and was a shareholder. Her liability for the debts of the bank is created by the statute, although in a limited sense there is an element of contract in her having become a shareholder; and the right of the receiver to maintain this action depends upon, and has its sanction in, the statute creating liability against each shareholder, in whatever way he may have become such. There have been cases in which there appeared such elements of contract as were deemed sufficient, in particular circumstances, to support an action. *Concord First Nat. Bank* v. *Hawkins*, 174 *U. S.* 364, 372; *Whitman* v. *Oxford Nat. Bank*, 176 *U. S.* 559, 565–6; *Matteson* v. *Dent*, 176 *U. S.* 521. But that fact does not justify the contention that an action upon an assessment made by the Comptroller is not based upon the statute.

In *McDonald* v. *Thompson*, 184 *U.S.* 71, 73, which was the case of a formal subscription to the capital stock of a national bank, and which also involved the meaning of the words "contract or promise in writing" in a statute of limitations, the court said: "There was no contract in writing with the creditors or depositors of the bank, and none with the bank itself, to which the receiver could be said to be a privy, except to pay for the stock as originally issued. Granting there was a contract with the creditors to pay a sum equal to the value of the stock taken, in addition to the sum invested in the shares, this was a contract created by the statute, and obligatory upon the stockholders by reason of the statute existing at the time of their subscription; but it was not a contract within the meaning of the Nebraska act [of limitation], since the ruling—that is, the subscription—contained no reference whatever to the statutory obligation, and no promise to respond beyond the amount of the subscription. In none of the numerous cases upon the sub-

ject in this court is this obligation treated as an express contract, but as one created by the statute and implied from the express contract of the stockholders to take and pay for shares in the association." All shareholders of stock in national banks become such, subject to the condition, declared by statute, that liability, to the extent of their shares, is imposed upon them for the contracts, debts and engagements of the bank. The statute, in effect, says to all who become owners of national bank stock, no matter in what way they become shareholders, that they cannot enjoy the benefits accruing to shareholders, and escape liability for the contracts, debts and engagements of the bank. In other words, the Government that created the bank has prescribed the terms upon which ownership of its shares could be acquired, and individual liability incurred by shareholders—executors, administrators, guardians or trustees only being exempted from individual liability. No exception is made in favor of married women holding property. If the Constitution or statutes of Florida had expressly incapacitated or forbidden a married woman from becoming under any circumstances the owner of bank shares—as counsel for plaintiff in error insists is the case—a question would be presented that does not arise upon the record of this case; and as the local law does not forbid married women from becoming the owners of bank stock, we do not go beyond what is necessary for the decision of the present case under the national banking law. All that we now decide is that the court below properly interpreted the statute, and did not err in rendering a personal judgment against Mrs. Christopher, as a shareholder in the bank, for the amount due under the assessment of the Comptroller. In what way the plaintiff may proceed in order to obtain satisfaction of the judgment is not a question to be determined in this action.

Judgment affirmed.

Mr. Justice WHITE and Mr. Justice MCKENNA concur in the result.

True copy.

Test:

Clerk Supreme Court, U. S.